

THE IRS TARGETING INVESTIGATION: WHAT IS THE ADMINISTRATION DOING?

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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THE IRS TARGETING INVESTIGATION: WHAT IS THE ADMINISTRATION DOING?

Thursday, February 6, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION,
AND REGULATORY AFFAIRS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:36 a.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan [chairman of the subcommittee] presiding.

Present: Representatives Jordan, DeSantis, Gosar, DesJarlais, Meadows, Bentivolio, Cartwright, Duckworth, Connolly, Horsford, and Cummings.

Also Present: Representatives Gowdy and Poe.

Staff Present: Will L. Boyington, Deputy Press Secretary; Molly Boyd, Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; David Brewer, Senior Counsel; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Christopher Hixon, Chief Counsel for Oversight; Michael R. Kiko, Legislative Assistant; Mark D. Marin, Deputy Staff Director for Oversight; Katy Rother, Counsel; Laura L. Rush, Deputy Chief Clerk; Sarah Vance, Assistant Clerk; Rebecca Watkins, Communications Director; Meghan Berroya, Minority Counsel; Aryele Bradford, Minority Press Secretary; Jennifer Hoffman, Minority Communications Director; Adam Koshkin, Minority Research Assistant; Elisa LaNier, Minority Director of Operations; Juan McCullum, Minority Clerk; Dave Rapallo, Minority Staff Director; Daniel Roberts, Minority Staff Assistant/Legislative Correspondent; and Donald Sherman, Minority Counsel.

Mr. JORDAN. The committee will come to order.

I want to welcome our witnesses today. You have to put up with a couple of opening statements from myself, Mr. Cartwright, maybe Mr. Cummings, and some other members. But then we will swear you in and get to your testimony. We want to hear from you just as quickly as we can.

May 10th last year, Lois Lerner, with a planted question at a meeting here in town, disclosed that targeting of conservative groups took place. She disclosed that even before the Inspector General's report was released. She did that after consulting with the chief of staff at the Treasury Department, put him on notice that they were going to do it this way, get out in front of this story.

And she said this. I just want to read from Ms. Lerner's comments. She disclosed that systematic targeting of Tea Party groups, conservative groups had taken place, and she said, "They used names like Tea Party or Patriots, and they selected cases simply because the applications had those names in the title. That was wrong. That was absolutely incorrect, insensitive, inappropriate. This additional scrutiny not only delayed the processing of their applications for a period of years, but also resulted in intrusive questions from the IRS that were far beyond the scope of legitimate inquiry."

That's Lois Lerner's statement. She admitted right when this thing first broke that people were targeted based on their conservative beliefs and delayed for years in getting their tax-exempt status.

Attorney General Holder said this was outrageous and unacceptable. The President said, we will not tolerate this kind of behavior in any agency. But 1 month after that, in a hearing in front of the Judiciary Committee, then FBI Director Mueller was asked a few questions. In fact, I asked him three questions. I said, "Director Mueller, can you tell me who the lead agent is in the case? Can you tell me how many agents you have assigned to the case? And can you tell me if you have interviewed any of the victims?"

His answer to those three questions: I don't know. I don't know. I don't know. Not exactly inspiring much confidence in the type of investigation the FBI and the Justice Department were engaged in.

Just recently, we learned that the person heading the investigation, Barbara Bosserman, gave \$6,750 to the Obama campaign and to the Democrat National Committee. She is the person heading the investigation. Again, we learned this not because the FBI told us, not because the Justice Department told us. Current and former IRS employees who have been interviewed in the course of the administration's investigation told us that she was the one leading the investigation and asking the questions.

A lady with a financial stake in a specific outcome is heading the investigation, a lady who has invested in the President's success is heading the investigation and the President could potentially be a target of that investigation, and we are supposed to believe this investigation is credible.

We invited Ms. Bosserman to come today. We wanted her to be sitting there with the people who were victimized by the IRS. I sent two letters. Mrs. Bosserman didn't respond back to me. Instead, Mr. Cole, deputy assistant attorney general, did. In fact, he sent me two letters within 5 days. Within the last 10 days we got those letters. In fact, Mr. Cole was in front of the Judiciary Committee just 2 days ago and I had a chance to question him and ask him those same three questions. Can you tell me who the lead agent is? You say it is a team, and not Ms. Bosserman, as we understand it to be. Can you tell me who is on the team? Can you tell me if you interviewed any of the victims? And his answers were the same as Mr. Mueller's clear back in the summer of 2013.

In those two letters Mr. Cole said that this was an ongoing investigation. In fact, he said it seven times, ongoing investigation. And yet, to my knowledge, no victims have been interviewed by the FBI or the Justice Department. Ongoing investigation, and yet the Wall

Street Journal through leaked sources has reported that no one is going to be recommended for prosecution. Ongoing investigation, and yet the President of the United States can go on national television on a day when a lot of people watch television, and say, "There is not a smidgeon of corruption in the IRS targeting scandal."

So here we are today. Ms. Bosserman won't come. The FBI won't answer any questions. The President said it is over. The Wall Street Journal reports that it is over. So we thought what we would do today is allow people who were victimized by the Internal Revenue Service to come tell their story.

The FBI may not want to interview you, Ms. Engelbrecht and Ms. Gerritson, but this committee does. Our witnesses these morning, Catherine Engelbrecht and Becky Gerritson, experienced the IRS targeting firsthand in the course of trying to exercise their First Amendment rights to make our country a better place for their neighbors and friends. They were harassed at the hands of their very government. In addition to the IRS, Ms. Engelbrecht was scrutinized by the FBI, the Bureau of Alcohol, Tobacco and Firearms, and OSHA.

Ms. Engelbrecht and Ms. Gerritson, we recognize and we deeply appreciate the courage that it takes for you to come here and testify today. Both Ms. Engelbrecht and Ms. Gerritson have also counsel present with them today, Ms. Cleta Mitchell and Mr. Jay Sekulow. These fine attorneys are also experts in the nonprofit field and represent dozens of clients that were mistreated by the Internal Revenue Service. In this capacity they will be able to shed light on the process and the abnormalities of the treatment faced by conservative groups.

Hopefully this morning's hearing advances the committee's interest in getting closer to the truth, which is when I am out and about Ohio and across the country, I get that question more than anything else. We want to know the truth, and we want people held accountable. I get it all the time. Is that going to happen? And I tell those people, we are going to do everything we can to get to the truth and hold people accountable.

And here is why it is so important. I will finish here and recognize Mr. Cartwright. When the Founders put together the First Amendment and all of the rights that are contained—freedom of religion, freedom of press, freedom of assembly, freedom of speech—when they talked about freedom of speech, the most important aspect of freedom of speech is your right to political speech, your right to criticize your government. And that is the very thing that the IRS attacked. And that is why this hearing and this subject is so important, and that's why I'm pleased to have the witnesses we have with us today.

With that, I would yield to the ranking member, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

As I have noted in previous hearings of this committee, I also am deeply troubled regarding IRS employees' improper handling of applications for tax-exempt status, a handling that pervades the American political spectrum and includes, obviously, right-wing groups and also left-wing groups, and we will talk about that in a moment. But since the chairman has just raised it, including alle-

gations about attorney Barbara Bosserman, I want to address that right away.

Part of the premise of this hearing, as I understand it, is that Chairman Jordan and the witnesses have concerns about the Department of Justice's investigation of the IRS for the improper treatment of tax-exempt organizations. Chairman Jordan has claimed that the investigation has, "the appearance of a substantial and material conflict of interest." Now, he has made that claim because a career prosecutor, who is one of at least 13 DOJ and FBI employees involved in the investigation, made political donations to the DNC and the President's campaign.

But I'm here to tell you, we have consulted with legal experts, and they have flatly rejected Chairman Jordan's interpretation of the law. One such expert is Professor Bruce Green of Fordham University Law School, who for the last 27 years has taught courses relating to legal ethics and criminal law and procedure, including a seminar on ethics in criminal advocacy. Professor Green also served as associate counsel in the office of Independent Counsel Lawrence Walsh, who prosecuted individuals during the Iran-Contra affair and later served as an appointee of then New York City Mayor Rudy Giuliani to the New York City Conflicts of Interest Board.

Professor Green explained that under the prevailing legal and ethical understandings, "This scenario does not constitute a conflict of interest." Professor Green added more pointedly, "A career prosecutor assigned to investigate a Federal official would not have a conflict of interest simply because the prosecutor contributed to one or the other party or to one or the other presidential candidate."

Professor Green furthermore explained, quote, "Because political donations are not a relevant consideration in making assignments, that is, case assignments, it would not be appropriate for the Department of Justice leadership to check career prosecutors' political donations before assigning them to an investigation."

I ask unanimous consent to enter the responses from Professor Green, as well as the statement of Columbia University Professor Daniel Richman, into the record.

Mr. JORDAN. Without objection.

Mr. CARTWRIGHT. And I would remind committee members that the Hatch Act is within this committee's jurisdiction, and that in it Congress explicitly states, "It is the policy of Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of this Nation."

Calling this line attorney, not a political appointee, but a career civil servant, in to testify in public about an ongoing investigation and to accuse her of being politically biased because she was exercising her right to participate in the democratic process of this Nation is unacceptable.

I will be happy to hear from the appropriate person at the Department of Justice after the investigation is completed. And I thank you, Mr. Chairman, and I yield back.

Mr. JORDAN. I thank the gentleman.

I would also ask unanimous consent to put into the record 28 CFR 45.2, Disqualification Arising from Personal or Political Relations from the Department of Justice of Ethical Rules. I will just quote before entering it into the record: "The employee's participation should not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution."

I would just remind my friend from Pennsylvania that it says, "likely to affect the public perception of the integrity." Significantly less than 1 percent of the population contributes that kind of money to a political campaign. There are 10,000 employees of the Justice Department. You would think they could find someone else, and you would think Ms. Bosserman would look at this and say, you know what, maybe I should recuse myself and not head up an investigation.

So I would ask that this be entered into the record as well.

Mr. CARTWRIGHT. Without objection.

Mr. JORDAN. And would now call on the gentleman from Texas, Mr. Poe—I need to do another unanimous consent—that our colleague from Texas, Mr. Poe, be allowed to participate in today's hearing.

Mr. CARTWRIGHT. Without objection.

Mr. JORDAN. So ordered. And Mr. Poe is recognized.

Mr. POE. Thank the chairman.

Catherine Engelbrecht is a friend of mine from Houston, and King Street Patriots is in my district. I have come to know her because her and her husband are small business owners. They are just trying to make a living in America.

And she started King Street Patriots, and she also started True The Vote because she was very concerned about voter corruption in Texas. She found it through the use of public records. And so she started those two programs, a citizen active. As soon as she gets active in these two programs, primarily True The Vote, trying to make our voter process fair, with integrity, she gets harassed by the Federal Government of the United States.

Harassment, what does that mean? First, the FBI came to see her; questioned her about some of the people that are attending her meetings. And she had numerous meetings with the FBI, including the fact that the FBI would sit in the King Street Patriot meetings. But that wasn't all. She was visited OSHA. She was visited by the EPA, or the Texas equivalent to the EPA doing an investigation. She was visited by the ATF, and harassed by the ATF. And of course she was harassed by the IRS on numerous occasions.

All she wanted was what every other organization that is trying to exercise the First Amendment wants and deserves, is a tax exempt. And because of that, as the chairman has said, the right to exercise the First Amendment is there primarily so that citizens can criticize government and not be afraid of government harassing them through their use of government administrative bureaucrats. All of these things happened to her. FBI, OSHA, EPA, ATF, IRS harassed her because of exercising her First Amendment right.

And I appreciate the fact that the witnesses are here to tell us how government oppressed them for exercising that. And I will yield back to the chairman. Thank you.

Mr. JORDAN. Anyone else? All righty, we will move to our witnesses. We have with us today Ms. Catherine Engelbrecht, is the founder of the King Street Patriots and True The Vote. Ms. Cleta Mitchell is a partner in Foley & Lardner, and Ms. Becky Gerritson, is president of the Wetumpka TEA Party, and Mr. Jay Sekulow, chief counsel of the American Center for Law and Justice.

Pursuant to committee rules, all witnesses will be sworn in before they testify. So will you please stand up, raise your right hand? Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Let the record reflect the witnesses answered in the affirmative.

I think you know how this works. You get approximately 5 minutes to make your statement, and we will be a little bit flexible with that. But, Ms. Engelbrecht, we will go right down the line. So we will start with you, Catherine, and you are recognized.

WITNESS STATEMENTS

STATEMENT OF CATHERINE ENGELBRECHT

Ms. ENGELBRECHT. Thank you so much, Mr. Chairman, members of the committee. My name is Catherine Engelbrecht.

Mr. JORDAN. Catherine, hit the—

Ms. ENGELBRECHT. Thank you. Good morning, Mr. Chairman, members of the committee. My name is Catherine Engelbrecht and I'm the chairwoman of True The Vote, a nonprofit election integrity organization; the founder of King Street Patriots, a citizen-led liberty group; and president of Engelbrecht Manufacturing. Thank you for this opportunity to share my story with you today, though at the outset it must be said that it is a story with a central theme that is shared by countless thousands of other Americans who have not yet been heard from, though I pray that they will be.

It must be made publicly known that across this country citizens just like me are being targeted by an administration willing to take any action necessary to silence opposition. I am an average American who prior to 2009 had never been active in the processes of government, but after volunteering to work in the polls in Texas in the 2009 elections, I saw fundamental procedural problems that I felt couldn't go unaddressed. So I started True The Vote, an organization that grew into a national movement to ensure that every American voter has an opportunity to participate in elections that are free and fair.

My life before I got involved and spoke out for good government stands in stark contrast to the life I now lead. As a wife, a mother, a small business woman working with my husband, raising our children, and participating in my church and PTA, the government collected my taxes and left me and my family in peace. But once I helped found True The Vote and King Street Patriots I found myself a target of this Federal Government.

Shortly after filing IRS forms to establish 501(c)(3) and (c)(4) tax-exempt organizations, an assortment of Federal entities, including law enforcement agencies and Congressman Cummings, came knocking at my door. In nearly two decades of running our small business my husband and I never dealt with any government agen-

cy outside of filing our annual tax returns. We had never been audited. We had never been investigated. But all that changed upon submitting applications for the nonprofit statuses of True The Vote and King Street.

Since that filing in 2010, my private businesses, my nonprofit organizations, my family, and I have been subjected to more than 15 instances of audit or inquiry by Federal agencies. In 2011 my personal and business tax returns were audited by the Internal Revenue Service, each audit going back for a number of years. In 2012, my business was subjected to inspection by OSHA on a select occasion when neither my husband or I were present, and though the agency wrote that it found nothing serious or significant, it still issued fines in excess of \$20,000.

In 2012 and again in 2013, the Bureau of Alcohol, Tobacco and Firearms conducted comprehensive audits at my place of business, and beginning in 2010 the FBI contacted my nonprofit organization on six separate occasions wanting to cull through membership manifests in conjunction with domestic terrorism cases. They eventually dropped all matters and have now redacted nearly all my files.

All of these incursions into my affairs began after filing applications for tax exemption. There is no other remarkable event. There is no other reason to explain how for decades I went unnoticed, but now find myself on the receiving end of interagency coordination into and against all facets of my life, both personal and private.

Bear in mind, distinguished ladies and gentlemen of this subcommittee, these events were occurring while the IRS was subjecting me to multiple rounds of abusive inquiry with requests to provide every Facebook and Twitter I had ever posted, questions about my political aspirations, and demands to know the names of groups that I had spoken with, the content of what I had said, and everywhere I intended to speak in the coming year.

The answers to these sorts of questions are not of interest to the typical IRS analyst, but they are certainly of interest to a political machine that would put its own survival against the civil liberties of a private citizen.

This government attacked me because of my political beliefs, but I refuse to be cast as a victim; not to the IRS; not to the FBI; not to OSHA; not to the Bureau of Alcohol, Tobacco and Firearms, or to any other government agency. I am not a victim, because a victim has no options. I do have options. And I intend to use them to the fullest extent of my capabilities.

As an American citizen I am part of a country that still believes in freedom of speech, and so I will continue to speak out. Here in Congress and all across this country, I will continue to press in every legal way possible, as I did by filing suit against the Internal Revenue Service. No American citizen should be willing to accept a government that uses its power against its own people.

After all of the tyranny and all of the things that have been to my organizations, to my family, and to me, many people would quit. And, Mr. Chairman, many Americans have quit. I have heard over and over that people are afraid to tell their stories. But know this: My experience at the hands of this government in the last 5 years have made me more determined ever than before to stand be-

fore you and to all of America and say that I will not retreat, I will not surrender, I will not be intimidated, and I will not ask for permission to exercise my constitutional rights.

I come before you today, Mr. Chairman, on behalf of Americans just like me asking for a solution to end this ugly chapter of political intimidation. There was a time when people of goodwill were encouraged to participate in the processes of government, not targeted because of it.

I applaud your request of the Internal Revenue Service to withdraw a proposed regulation limiting political speech by nonprofit organizations. That action should be taken quickly and without fail, because if it is not, it will effectively codify into law the very thing that brings me here today. If those regulations pass, nonprofit organizations across the country will be destroyed. No American, regardless of their political affiliation, should support the silencing of political speech.

Beyond ending the proposed IRS regulations, I ask you, I implore you as representatives to the people of this great Nation to pass a law that protects all citizens of this country from the increasing use of such abusive practices. Pass a law that exposes government officials who trample on the rights of ordinary citizens. Do not allow them to continue to cower behind a veil of secrecy, abuse, unethical and unfair behavior. Send the President a bill that makes public, at the option of persons and entities regulated, all communication between government agencies and those they regulate. No restricted, redacted, selectively release, files. Give us a truly transparent process. Protect the people. Restore liberty to the people, because we will not be silenced.

Thank you for this opportunity, Mr. Chairman, and the committee's members.

Mr. JORDAN. Thank you, Ms. Engelbrecht.

[Prepared statement of Ms. Engelbrecht follows:]

**Testimony of
Catherine Engelbrecht**

**House Committee on Oversight &
Government Reform**

**“The IRS Targeting Investigation:
What is the Administration Doing?”**

February 6, 2014

Catherine Engelbrecht
Founder and President
True the Vote, King Street Patriots
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Good morning Mr. Chairman and Members of the Committee. My name is Catherine Engelbrecht. I am the Chairwoman of True the Vote, a nonprofit election integrity organization; the Founder of King Street Patriots, a citizen-led liberty group; and President of Engelbrecht Manufacturing.

Thank you for this opportunity to share my story with you today, though at the outset it must be said that it is a story with a central theme shared by countless thousands of other Americans who haven't yet been heard from, though I pray they will be. It must be made publicly known that across this country citizens just like me are being targeted by an administration willing to take any action necessary to silence opposition.

I am an average American who, prior to 2009, had never been active in the processes of government; but, after volunteering to work at the polls in Texas in the 2009 elections I saw fundamental procedural problems that I felt could not go unaddressed. So, I started True the Vote, an organization that grew into a national movement to ensure that every American voter has an opportunity to participate in elections that are free and fair.

My life before I spoke out for good government stands in stark contrast to the life I now lead. As a wife, a mother, and small businesswoman working with my husband, raising our children and participating in my church and PTA, the government collected my taxes and left me and my family in peace. But when I helped found and led True the Vote and King Street Patriots, I found myself a target of this federal government.

Shortly after filing IRS forms to establish 501(c)(3) and 501(c)(4) tax-exempt organizations, an assortment of federal entities – including law enforcement agencies and a Congressman from Maryland, Elijah Cummings – came knocking at my door. In

nearly two decades of running our small business, my husband and I never dealt with any government agency, outside of filing our annual tax returns. We had never been audited, we had never been investigated, but all that changed upon submitting applications for the non-profit statuses of True the Vote and King Street Patriots. Since that filing in 2010, my private businesses, my nonprofit organizations, and family have been subjected to more than 15 instances of audit or inquiry by federal agencies.

- In 2011, my personal and business tax returns were audited by the Internal Revenue Service, each audit going back for a number of years.
- In 2012, my business was subjected to inspection by OSHA, on a select occasion when neither my husband nor I were present, and though the agency wrote that it found nothing serious or significant, it still issued fines in excess of \$20,000.
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Bear in mind, distinguished ladies and gentlemen of this sub-committee, these events were occurring while the IRS was subjecting me to multiple rounds of abusive inquiries, with requests to provide every Facebook and Twitter entry I'd ever posted, questions about my political aspirations, and demands to know the names of every group I'd ever made presentations to, the content of what I'd said, and where I intended to speak for the coming year. The answers to these sorts of questions are not of interest to the typical IRS analyst, but they are of great interest to a political machine that puts its own survival above the civil liberties of any private citizen.

This government attacked me because of my political beliefs, but I refuse to be cast as a victim; not to the IRS, not to the FBI, not to OSHA, not to the Bureau of Alcohol, Tobacco and Firearms, or to any other government agency. I am not a victim, because to be a victim is to accept that I have no options. I do have options and I intend to use them all to the fullest extent of my capabilities.

As an American citizen, I am part of a country that still believes in freedom of speech, and so I will continue to speak out; here in Congress and all across this country, I will continue to press in every legal way possible, as I did by filing suit against the Internal Revenue Service. No American citizen should be willing to accept a government that uses its power against its own people.

I also refuse to let a precedent be set that allows Members of Congress, particularly the Ranking Member of the House Oversight and Government Reform Committee, to misrepresent this governing body in an effort to demonize and intimidate citizens. Three times, Representative Elijah Cummings sent letters to True the Vote, demanding much of the same information that the IRS had requested. Hours after sending letters, he

would appear on cable news and publicly defame me and my organization. Such tactics are unacceptable. It is for these reasons that immediately after this hearing I am filing a formal complaint with the House Office of Congressional Ethics and asking for a full investigation.

After all the tyranny, all the things that have been done to my organizations, to my family and to me; many people would have quit. And, Mr. Chairman, many Americans have quit. I have heard, over and over, that people are afraid to tell their stories because of what has or might happen to them and their families at the hands of our own government.

But know this, my experiences at the hands of this government in these last five years have made me more determined than ever to stand before you and America and say I will not retreat. I will not surrender. I refuse to be intimidated. I will not ask for permission to exercise my Constitutional rights.

I come before you today Mr. Chairman, on behalf of Americans just like me, asking for a solution to end this ugly chapter of political intimidation. There was a time when people of goodwill were encouraged to participate in the processes of government; not targeted because of it. I applaud Congressman Issa and Jordan's request of the Internal Revenue Service to withdraw a proposed regulation limiting political speech by nonprofit organizations. That action should be taken quickly and without fail, because if allowed to pass, these new regulations will effectively codify into law the very practices that bring me here today. If those regulations pass, non-profit organizations across the country will be destroyed. No American, regardless of their political affiliation, should support the silencing of political speech.

There is a must-pass debt ceiling increase bill coming up shortly, it may be Congress' only chance to stop the regulations that are intended to silence conservative voices from being heard. I urge each of you to go to the Speaker and urge him to draw a line in the sand by putting language into the debt ceiling law that negates the IRS regs. I'm standing up against this abuse of power - will you join me?

Beyond ending the proposed IRS regulations, I ask you - I implore you – as representatives to the people of this great nation, to pass a law that protects all citizens of this country from the increasing use of such abusive practices.

Pass a law that exposes government officials who trample on the rights of ordinary citizens. Do not allow them to continue to cower behind a veil of secrecy, abuse, unethical and unfair behavior. Send the President a bill that makes public, at the option of persons and entities regulated, all communication between government agencies and those they regulate. No restricted, redacted, selectively released files; give us a truly transparent process. Stop hiding behind privacy rules meant only to protect the government. Protect the people. Restore liberty to the people. We will not be silenced.

Thank you Mr. Chairman and Committee Members for allowing me this opportunity to share my testimony with you today.

Respectfully Submitted,
Catherine Engelbrecht

Mr. JORDAN. And God bless you. And again, we appreciate you being here today.

You referenced a proposed rule. I would like to enter into the record a letter that Chairman Issa and I sent to the new Commissioner of the IRS, John Koskinen, 2 days ago, where we highlight some of the things you have referenced in your testimony; specifically, how this rule was being prepared long before the TIGTA report came into existence and how Lois Lerner was integrally involved in putting this rule together. And so I would ask, with unanimous consent, to enter this into the record. Without objection that will take place.

Ms. Mitchell, you are now recognized.

STATEMENT OF CLETA MITCHELL

Ms. MITCHELL. Thank you, Mr. Chairman, members of the subcommittee, thank you very much for the opportunity to appear here today.

I'm a practicing attorney, and I deal with the IRS and have dealt with the IRS on a daily basis for many, many years. What I do is I help people obtain the tax-exempt status or to fit their activities within the proper section of the Tax Code depending on what it is they want to do. I want to make three primary points here today. I will be happy to answer questions at the appropriate time.

First, the IRS scandal is real. It's not pretend. It's real. Number two, the IRS scandal is not just a boneheaded bunch of bureaucrats in some remote office, contrary to what the President of the United States told the American people on Sunday. And number three, the IRS scandal is not over. It is continuing to this day, and the Department of Justice investigation is a sham. It is a nonexistent investigation.

With regard to point number one, let me tell you in one sentence what the IRS scandal is. The IRS, at the direction of some political elites in Washington, not in Cincinnati, but Washington, took what had been for decades a process of reviewing applications for exempt status that for a 501(c)(4) organization could be expected to take 3 to 4 weeks. And they converted that process into one that took 3 to 4 years and in some cases is still not over.

Number two, the line agents in the IRS had their work disrupted and halted by Washington. In 2010, True The Vote filed its application for (c)(3) status and did not obtain that (c)(3) until we sued the IRS. So in September they granted it. People shouldn't have to sue to get their tax-exempt status.

And when Lois Lerner and President Obama accused line agents in Cincinnati of being responsible, ladies and gentlemen, that is a lie. And I knew when Lois Lerner said that in May of 2010, when she admitted that it was happening, after we knew it was happening, it is sort of like we knew we were targeted, it's just that she finally admitted it, but I knew it hadn't happened in Cincinnati because the first time I really became aware of this was with a group that I represent. We filed for tax-exempt status in October of 2009. And besides cashing our check for our filing fee, we did not hear from the IRS again until June of 2010. And we didn't hear from Cincinnati; we heard from Washington.

That group did one thing. It lobbied against Obamacare in the fall of 2009 and the spring of 2010, something that a 501(c)(4) organization is permitted to spend 100 percent of its program expenditures doing. We did not get the tax-exempt status for that organization until July of 2013.

When I took on the representation of Catherine Engelbrecht and her two organizations in the fall of 2011, this is now a year after she has sent her application to the IRS, and she has heard nothing, and when I talked to the assigned agent in Cincinnati in October of 2011, saying we are going to supplement the application to try to help make it easier for you to process, he told me at the time, oh, there's a task force in Washington, we can't do anything until we hear back from Washington.

Number three, this scandal is not over. The lying has not stopped. I represent one Tea Party group, Tea Party Patriots, who applied in December of 2010. They still don't have their (c)(4) status. There are lies upon lies in this ugly episode. The Commissioner of the IRS lied to Congress, lied, I believe it was this committee in March of 2012, or April of 2012, when he said there was no targeting.

How many communications from the IRS to Members of Congress who inquired about the status of applications and whether there was targeting, how many communications were there in which agents of the IRS told Congress that there was no targeting? Those are lies. Lying to Congress is a crime.

The Department of Justice has refused to investigate who it was who was responsible for releasing the confidential tax information of Koch Industries to the President's economic advisor who, in turned, released it to the press. Or who released the National Organization of Marriage's tax return? I represent NAM. We have sued the IRS to try to get to the bottom of why our confidential tax information was made available to our political opponents.

Where is the FBI in investigating? That is a criminal offense. It is a criminal offense to have also for the IRS to release the confidential donor information of the Texas Public Policy Foundation and the Republican Governors' Public Policy Council, conservative organizations whose donor information was released by the IRS. That's a criminal offense. Who is investigating that?

And then finally, again, it is a felony to lie to a Federal agency. And yet, the IRS on the day after Thanksgiving in proposing these regulations, the agent from the IRS who transmitted those proposed regulations in the formal publication says that there are no related documents. That's what it says on the Web site: related documents, none. Yet, I have submitted a FOIA request on behalf of the Tea Party Patriots for the underlying background documents, and they said, we can't get you all those documents until April. The public comment period closes February 27th. So there are no documents, but it will take them until April to get them to us. That's a lie.

And they also lied when they transmitted those regulations and said that the purpose of the regulations, the genesis was the TIGTA report.

There are too many lies, Mr. Chairman. It's time to get to the truth. It's time for the FBI to investigate those criminal acts. And

it's time for the IRS to cooperate as we try to get to the truth of why it's happened and how to make it stop. Thank you.

Mr. JORDAN. Thank you, Ms. Mitchell.

[Prepared statement of Ms. Mitchell follows:]

**TESTIMONY OF CLETA MITCHELL, ESQ.
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND
REGULATORY AFFAIRS HEARING
OF THE
HOUSE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM ON
“THE OBAMA ADMINISTRATION’S IRS INVESTIGATION:
AN UPDATE”**

FEBRUARY 6, 2014

Chairman Jordan and Members of the Subcommittee:

Thank you for the opportunity to appear before you today – and thank you for your ongoing efforts to get to the truth of the IRS abuse of hundreds of citizens grassroots organizations across the country over the past four years.

There are several main points I want to make today – and a number of questions that need to be answered by the Subcommittee, the full committee, the Congress of the United States, the IRS and, to the topic of today’s hearing, the Department of Justice and the FBI.

As I have said and written publicly for months: since the President announced on May 15, 2013 his intention that Attorney General Eric Holder and the FBI would conduct a full investigation into the IRS scandal, and despite having been contacted by hundreds – possibly thousands of people about the IRS scandal, asking what went on – and, more importantly, what is still going on – having talked to reporters, citizens, organizations, members of Congress and congressional staff about what exactly I know about the IRS Scandal – and I know a lot as I will describe momentarily – despite having spoken to many thousands of people about the scandal...I have yet to receive a single phone call from anyone in the Department of Justice. None of my clients have received a single contact from the FBI, the DOJ or any investigator regarding the IRS Scandal.

What would I tell them if they called me?

I would tell them what I experienced on behalf of my clients, starting in the fall of 2009 – yes, that’s right – the fall of 2009 – and I would tell them what is STILL going on TODAY. I have personally witnessed the fact that those organizations who did not accept the Werfel Deal offered last summer to groups that if they pledged to engage in no more than 40% ‘political activities’ - -

including not just expenditures but also volunteer activities –and to sign under penalty of perjury annually into perpetuity...and which I could not advise a client to accept because they would be agreeing to something that has no basis in law whatsoever...and that those groups who did NOT accept the deal received ANOTHER round of questions from the IRS in August of 2013. One of those was King Street Patriots, which finally received its c4 status in November of 2013...which was more than 3 ½ years after filing its application.

Another of the groups, Tea Party Patriots, received and answered another round of questions...and STILL has not received its c4 status. This, despite the fact that it has NEVER engaged in *any* political activities through its 501c4 organization.

In fact, Mr. Chairman, the IRS targeting is still going on today. As we sit here, as we speak – the IRS has not stopped its targeting of conservative and tea party organizations for special mistreatment.

As a practicing attorney in the area of political law, and representing a multitude of conservative issue organizations, and Republican candidates, campaigns, and party committees – as well as others in the policy, advocacy and legislative, and political process – I have spent many, many years dealing with the IRS on behalf of my clients.

Attached to my testimony today is a backgrounder memorandum that I wrote in May, 2013 to explain to those who might be interested exactly what the IRS Scandal involved. I will not go through the entire memorandum today – but suffice to say that THIS is what the IRS scandal involves – and it is still happening:

Before 2009, an application for c4 status would be processed in approximately 3 to 4 weeks. That is the process followed by the IRS for decades. Because contributions to a 501c4 organization are NOT tax deductible to the donors, there is no real tax consequence to the IRS related to a c4 organization.

And all that tax exemption means to an organization is that its contributions are not taxable as INCOME to the organization. Organizations pay other types of taxes – they just do not pay INCOME taxes on their contributions. That is ALL that ‘tax exempt’ means.

Beginning in the fall of 2009, this IRS under this Administration began to stop the processing of applications for conservative c4 and c3 status of groups on the BOLO list: tea party, patriot or other terms on the list.

It became apparent to me in the spring and summer of 2010 that something had changed at the IRS. I didn't know what – I just knew that something was going on.

In the fall of 2011, when I started assisting Catherine Engelbrecht with the applications for exempt status for True the Vote and King Street Patriots, I contacted the Cincinnati office and spoke to the IRS agent assigned to those organizations – and he told me at that time that the Washington, DC office of the IRS had taken over the processing of the applications and the Cincinnati office was awaiting instructions from Washington.

A couple months later, both True the Vote and King Street Patriots, and hundreds of other tea party and conservative grassroots organizations across the nation, received burdensome, intrusive, outrageous and completely mystifying letters with literally hundreds of questions about the internal operations of the organizations. True the Vote's letter had 102 questions in it.

That is when I brought copies of the letters to the attention of congressional staff. I knew that something terrible was going on inside the IRS related to these applications.

Now, we know that it is true. That something terrible WAS going on inside the IRS.

But here we sit on February 6, 2014 – two years AFTER those horrible letters went to all of those hundreds of grassroots organizations – and I want to know, WHAT is the Obama Administration doing about it?

What is the FBI doing?

What is the Department of Justice doing?

I know what they are doing. They are whitewashing the past and trying to permanently keep these grassroots organizations from carrying out the basic activities of what c4 organizations do.

If the FBI had contacted me, I would tell them what my clients have gone through and I would ask them to investigate several things:

1. When IRS Commissioner Schulman testified before Congress in March 2012 that there was NO targeting of conservative organizations, that was a lie. The last time I checked, lying to Congress is a felony. Just ask Roger Clemens. What has the FBI done to review all of the statements – both in hearings and in written communications – from the IRS to Congressional committees and members – and to ascertain the extent and source of false information provided to Congress – and to prosecute all of those who lied to Congress. That's a crime. People should pay for lying to Congress.
2. Who leaked the confidential taxpayer information about Koch Industries to the White House Economic advisor who, in turn, released it to reporters on a conference call? That is a criminal act.
3. Who was responsible for releasing the confidential donor information of the National Organization for Marriage, the Texas Public Policy Foundation, and the Republican Governors Public Policy Council – all conservative organizations whose confidential donor schedules were released to the public by the IRS. That is a crime.
4. Why did Lois Lerner plead the 5th before your full Committee? She apparently knows of criminal acts involved in this scandal. What has happened to get to the bottom of what Lois Lerner knows about the crimes that have been committed?
5. Who was responsible for the multiple federal agencies' descending upon Catherine Engelbrecht's organizations, her family businesses and her family over the past four years? The FBI was one of the perpetrators...who is investigating and getting to the bottom of this bizarre series of events?
6. And I would also point the FBI to the complaint that Catherine Engelbrecht has filed today with the Office of Congressional Ethics – asking OCE to determine whether Rep. Elijah Cummings has violated the rules of the House of Representatives and, indeed, federal law by his pursuit of his sole inquiry against True the Vote, misrepresenting that it was the work of a House committee when it was not – and whether Rep. Cummings or his staff were in any way involved in the abuse of Catherine Engelbrecht and her family by the federal government.

Finally, I would direct the FBI's attention to the fact that the IRS and the Department of Treasury are lying to the American people in the statements recently published in the November 29, 2013 Federal Register with regard to the proposed permanent rules for 501c4 organizations. These regulations, if adopted, will essentially take away from these citizens groups their c4 status finally obtained only after the TIGTA report was issued last year – for those who did finally receive it.

The IRS and Treasury have stated for the record that these proposed rules are in 'response' to the TIGTA report...when, in fact, we know that that is a LIE. These proposed rules were underway for some time; the TIGTA report and the Werfel report last summer are being used as a PRETEXT for rules the IRS has been intent upon issuing for some time – to put these groups out of business permanently.

It is a felony in the federal criminal code to lie to a federal agent or agency. Those who have filed these false submissions related to this proposed rulemaking should be investigated and prosecuted for LYING about the source of the proposed rules, and the failure of the IRS and Treasury to post on the public record the underlying documents that serve as the background information related to the proposed regulations. The Regulations.gov website states – falsely – that there are ZERO background documents associated with the proposed regulations. That is a lie. It is a false statement in violation of 18 U.S.C. §1001.

Crimes have been committed, Mr. Chairman. Crimes are still being committed. The Department of Justice and the FBI are obligated to enforce the laws of the United States, which they are utterly failing to do.

The public is entitled to get TRUTH, not lies.

The bottom line is that the Department of Justice and the FBI are not doing their jobs to pursue justice and the truth. And the IRS and the Department of Treasury continue to cover up the web of lies they have been telling for the past four years.

We would hope that this Subcommittee and, indeed, the full Committee would pursue this investigation to get to the truth and to reveal the truth to the American people. We deserve no less. Thank you.




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MEMORANDUM

CLIENT-MATTER NUMBER

TO: Interested Parties

FROM: Cleta Mitchell, Esq. 
Foley & Lardner, LLP

DATE: May 20, 2013

RE: IRS Targeting of Conservative Groups: A History, Overview and Status Report

After reviewing the TIGTA Report, numerous press reports and the hearing conducted on Friday, May 17, 2013 by the House Ways & Means Committee at which Acting Commissioner Steven T. Miller testified, it is apparent that a brief history and overview might be of assistance to Members of Congress and members of the media – to place into context the manner in which the IRS processed applications for exempt status prior to 2010, what has transpired during this terrible targeting period, and some reactions to the statements and misstatements and misrepresentations of Acting Commissioner Miller last week.

1. Processing of Applications for Exempt Status Prior to 2010

My law practice is as an attorney who has practiced in the area of non-profits and exempt organizations for many years. In that regard, I am well familiar with the process of assisting clients to create nonprofit organizations which meet the needs of the activities in which the clients propose to engage.

The process essentially is as follows: a group of individuals determine the types of programs and activities in which they wish to become active and, from that, I advise them as to the type of nonprofit entity that would be appropriate for those activities.

Attached to this Memorandum is a chart of entities that I provide to clients, which describes the similarities and differences between/among the various types of nonprofit organizations.

See Chart of Entities, Attachment #1



A group seeking tax exemption under Section 501(c)(3) of the Internal Revenue Code ("IRC") submits the IRS Form 1023, which outlines the mission and exempt purpose of the organization and the types of activities and programs in which it intends to engage.

A group seeking tax exemption under Section 501(c)(4) (a social welfare / grassroots lobbying organization) or a 501(c)(6) (a business league, trade association) files a Form 1024, which outlines its mission and exempt purpose and the types of activities and programs in which it intends to engage.

Prior to 2010, the time frame for review and receipt of IRS tax exempt status would typically be three months to one year for a 501(c)(3) organization and 3 to 6 months for a 501(c)(4) or (c)(6) organization.

Below is a sample of some of my clients' applications for exempt status and the processing time prior to 2010, when the IRS instituted its targeting program. The dates below provide a sense of the efficiencies of the IRS in reviewing and acting upon applications *before* the agency decided to inflict massive paperwork burdens on conservative applicants in 2010.

Client #1: For a client seeking 501(c)(3) exemption, the application was filed on or about May 16, 2009. A letter was received on June 8, 2009 from the IRS seeking additional information. The response was submitted on June 29, 2009 and the letter of determination of exempt status was issued on July 15, 2009.

Client #2: For a 501(c)(4), application filed on October 5, 2007, and a letter of recognition issued on November 16, 2007.

Client #3: For a 501(c)(4) application filed on September 23, 2009, the letter of determination was issued on November 22, 2009.

Client #4: For a 501(c)(6) application filed on October 29, 2010, the letter of determination was issued on February 1, 2011.

Client #5: For a 501(c)(3) application filed on April 9, 2008, a letter requesting additional information was received on September 25, 2008. A response was filed on October 27, 2008 and the letter of determination of exempt status was issued on December 4, 2008.

Client #6: For a 501(c)(4) application filed on August 23, 2007, a letter of determination was issued on September 14, 2007.

Client #7: For a 501(c)(4) application filed on May 19, 2004, a letter of determination was issued on June 23, 2004;

Client #8: For a 501(c)(4) application filed on December 12, 2007, a letter of determination was issued on February 27, 2008.



Client #9: For a 501(c)(4) application filed on July 30, 2009, a request for more information was sent by the IRS on December 11, 2009. A response was filed on February 17, 2010 and the letter of determination was issued in March 2010.

By way of example of the types of questions asked by the IRS prior to the tea party targeting program, the following is taken from the request for more information received from the IRS for a 501(c)(3) applicant in 2009:

Additional information requested:

1. To meet the organizational test for exemption under section 501(c)(3) of the Internal Revenue Code of 1986, the organization's organizing document, Articles of Incorporation, must be amended in the manner shown below:

Please replace all occurrences of "2004" with "1986" in Article 4.

Please replace "2004" with "501(c)(3)" and replace "501(c)(3)" with "1986" in Article 5.

- a. Please contact the appropriate State agency to inquire about their amendment process.

The organization may want to ask about any fees the State may require be attached to the amendment request.
- b. Submit two copies of the amendment to the appropriate State official in the State in which the organization is incorporated, requesting one copy be returned to the organization when filed and approved by the State.
- c. When the copy is returned, with evidence that the State has filed and approved it, send a copy to the Internal Revenue Service.

This amendment will need to be completed before exemption can be granted.

Note. If incorporated, this 501(c)(3) language must be contained in the Articles of Incorporation of the organization. The IRS cannot accept the language in the Bylaws or any other attachment.

Please use the specified language provided. If you make any deviations, please discuss them with the Service prior to amending.

The questions were answered and within a matter of weeks, the letter of determination was issued. This type of specific request for information directed to the applicant's submission was customary prior to the onset of the conservative targeting by the IRS in 2010.

2. The IRS Internal Changes in 2010.

It became apparent during the course of 2010 that the IRS had changed its system for reviewing and processing applications for 501(c)(3) and 501(c)(4) recognition. The timeline for some of the clients I currently represent demonstrates that the IRS is STILL holding up the applications for exempt status recognition of dozens – if not hundreds – of conservative organizations.



Attached are examples from 4 organizations' letters received from the IRS more than a year ago. Only one of the referenced organizations has received its letter of exempt status. All the others are still pending.

In fact, two of the organizations have been required to respond to another round of extensive questions in the fall of 2012, with no letters of determination yet received.

See Attachments #2 through #5, Organization #1, #2, #3, #4 letters from the IRS.

With regard to Organization #4, note the letter I sent to the IRS (to the Washington, DC office) in June 2011. After filing the application in 2009, sending the letter in 2011 and the response to the exhaustive questions in 2012, the organization has yet to receive its recognition of exempt status.

3. *Response to statements by the IRS / Acting Commissioner Steven Miller during the week of May 13, 2013.*

*** "The problems were resolved last year".**

THIS PROBLEM IS CONTINUING. It has not been "resolved" as stated by Acting Commission Miller. It is *not* in the past tense. Many organizations are *still* awaiting responses from the IRS. What systemic changes have been put in place to ensure that the odious questions have been terminated and the applications are being processed in accordance with the historic legal standard of review rather than the unlawful intrusion into the internal workings of these conservative citizens organizations?

*** "Generally, 501(c) applications are centralized for review if there are indications in the application that the organization may engage in political campaign intervention, lobbying or advocacy. This was done to sure that the legal requirements related to these applications are applied in a fair and consistent manner."**

This was never done prior to 2010. The Acting Commissioner is not being truthful. These terms "political campaign intervention, lobbying or advocacy" are legal terms of art and subject to years of regulations, standards of review, cases and interpretation.

During and after 2010, the *only* 'centralization' that occurred was that involving conservative organizations seeking 501(c)(3) or 501(c)(4) recognition.

The terms have legal meaning and should not have been treated in the subjective manner in which the IRS considered these applications. Here is a short overview of the differences in the terms. They are *not* interchangeable as the Acting Commissioner has suggested.

1. Advocacy. No legal definition and NO prohibition in Internal Revenue Code. All groups advocate in some way or another for their mission. Totally permissible for ALL exempt organizations.



2. **Lobbying.** IRC defines it as an expenditure to influence legislation. A c4 is permitted to spend 100 % of its funds on lobbying. A c3 is permitted to spend a portion of its funds on lobbying. In other words, lobbying is a legally permissible activity for both types of entities, just allowable in differing amounts. *Most* of the tea party organizations were seeking to engage in lobbying activities that are completely permissible for a c4 organization. So why were they subject to this extra scrutiny?

3. **Political.** IRC does not define "political" as such. The IRC definition refers to an expenditure for "partisan campaign intervention". A c4 CAN make such expenditures as long as it is NOT a majority of its expenditures in any fiscal/calendar year. In other words, it is legally permissible for a c4 to make political expenditures as long as those expenditures are a) not a majority of its program expenditures and b) the c4 reports and pays taxes on its political expenditures. Only a 501(c)(3) is prohibited from making expenditures for partisan campaign intervention. Virtually all of the organizations targeted were seeking 501(c)(4) status, which permits them to engage in some degree of political campaign activity.

To have singled out these groups was to try to *keep* them from engaging in legally permissible political speech and association, in violation of the First Amendment. And it is continuing.

*** "I think that what happened here was that foolish mistakes were made by people who were trying to be more efficient in their workload selection"**

So the decision to change a system that (prior to 2010) might ask 5 to 6 short questions specifically about an application to one that consisted of dozens of questions, necessitating volumes of materials and documents to be filed with the IRS was done in order to 'be more efficient'? Acting Commissioner Miller also spoke about IRS employees 'taking shortcuts'. This was hardly a 'shortcut' when it lengthened the process substantially, as documented in the TIGTA Report.

*** The agency pinpointed two "rogue" employees in the Cincinnati IRS office as being responsible for "overly aggressive" handling of tea party requests for tax-exempt status over the past two years.**

This is completely false. In 2011, at least one of the Cincinnati IRS agents assigned to handle two clients' applications advised me that the Washington, DC office was actively involved in the decisions and processing of my clients' applications for exempt status. This was memorialized in a letter to the agent, Ron Bell, on November 8, 2011. When I called him in December 2011 for an update, he advised me that the applications had been transferred to a special task force in Washington, DC for further review. The effort by senior IRS officials to lay this scheme at the hands of a few 'low level' IRS employees is despicable and must not be tolerated.

Attachment # 6 – November 8, 2011 Letter to IRS Agent Ron Bell in Cincinnati.



Conclusion.

There is much work remaining to be done to ascertain the truth of this matter. The IRS leadership continues to dissemble, deny and obfuscate.

Attached are two additional letters:

1) A letter signed by several attorneys submitted to the IRS in March 2013 expressing concern about the unlawful release of confidential organizational filings with the IRS.

2) My May 10, 2013 Letter to Acting Commissioner Miller and Exempt Organizations Director Lois Lerner regarding the IRS's "apology" regarding the targeting of conservative organizations.

TIGTA, Congress and others must obtain internal communications and correspondence from the IRS and interview IRS employees and agents under oath. That should not be delegated to the Department of Justice, which has also been criticized by its Inspector General for unlawful 'ideological and political' considerations in official decision-making.

Please contact me at (202) 295-4081 or email cmitchell@foley.com for additional information.

Table of Tax Exempt Entities and Permissible Activities – As of December 2, 2010

IRS CODE SECTION	TYPES OF ENTITIES	IRS PERMISSIBLE ACTIVITIES	IRS PROHIBITED/AVAILABLE ACTIVITIES	FEC REGULATION OF POLITICAL ACTIVITIES
§501c3	Charities, educational institutions and foundations	Charity, public education, limited grassroots lobbying	Lobbying as a <i>substantial</i> portion of activities is prohibited; all partisan campaign activities prohibited; can lose tax status & pay penalties	IRS regulations govern c3's political activities; FEC permits certain types of activities: candidate forum/debates, issue-related activities, but <i>no</i> candidate-related communications
§501c4	Social welfare, grassroots and other lobbying and/or issue membership organizations	Public education on policy issues; direct lobbying; member mobilization for grassroots lobbying & campaign purposes; May make candidate related expenditures but cannot be major purpose	Direct partisan political campaigning is permissible, but taxable; Lobbying and political expenses not tax deductible to members	Candidate related independent (express advocacy) and electioneering (issue advocacy) public communications permitted; Member mobilization for / against candidates; May NOT make contributions to federal candidates, party committees (same in many states, but some states DO allow)
§501c6	Business leagues, trade associations, chambers of commerce, etc.	Benefits to members engaged in similar business enterprises; public policy organizing; direct and grassroots lobbying; member mobilization for grassroots lobbying & campaign purposes; May make candidate related expenditures but cannot be major purpose	Direct partisan political campaigning is permissible, but taxable; Lobbying and political expenses not tax deductible to members	Candidate related independent (express advocacy) and electioneering (issue advocacy) public communications permitted; Member mobilization for / against candidates; May NOT make contributions to federal candidates, party committees (same in many states, but some states DO allow)
§527	Political Organizations under tax code	Political candidate committees; party committees; issue, voter education and other advocacy committees;	IRS defines "exempt purpose activities": may only engage in exempt purpose activities; must pay taxes if spent for non-exempt purposes, reporting required of all contributions of \$200 and expenditures of \$500 or more;	Political committees whose "major purpose" is influencing federal election is subject to FECA; otherwise, not registered as political committee with FEC
§527 - PAC	Registered with FEC (or similar state agency)	Same as above	Same as above	May contribute to and raise \$ for candidates, political parties; May make independent expenditures

Clea Mitchell
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(202) 295-4081 (direct line)
(202) 672-5399 (fax)

4847-1727-0286.2

Attachment #1

Table of Tax Exempt Entities and Permissible Activities – As of December 2, 2010

Super PAC	Registered with FEC	Same as above	Same as above	May NOT contribute to candidates; MAY make independent expenditures
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Cleta Mitchell
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 cmitchell@foleylaw.com
 (202) 295-4081 (direct line)
 (202) 672-5599 (fax)
 4847-172702852

Attachment #
2

ORGANIZATION #1

501(c)(4) Application

Application Submitted:

Approximately November, 2009

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: February 8, 2012

Employer Identification Number:

Person to Contact – Group #:

Contact Telephone Numbers:

Phone

Fax

Response Due Date:

February 29, 2012

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter and the enclosed Application Identification Sheet to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.
- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

Additional Information Requested:

1. Provide a print-out of each of your website's pages or proposed website's pages, including any pages with restricted access.
2. Provide details regarding all of your activity on Facebook and Twitter. Also, provide hard copies of all advertising you have conducted using social media outlets.
3. Submit the following information relating to your past and present directors, officers, and key employees:
 - a) Provide a resume for each.
 - b) Indicate the number of hours per month each individual has provided or is providing services to you.
 - c) Provide a description of all the services each individual provides or has provided to you.
 - d) Indicate the total compensation provided to each individual.
 - e) Describe how each compensation package was determined.
 - f) Indicate if any of your current and former officers, directors, and key employees are related to each other (include family and business relationships) and describe the nature of the relationship.
4. List each past or present board member, officer, key employee and members of their families who:
 - a) Has served on the board of another organization.
 - b) Was, is or plans to be a candidate for public office. Indicate the nature of each candidacy.
 - c) Has previously conducted similar activities for another entity.
 - d) Has previously submitted an application for tax exempt status.
5. Do you have a conflict of interest policy? If yes, submit a copy.
6. Submit a copy of your by-laws.
 NOTE: If your organization does not have by-laws, submit a statement to that effect signed by one of your principal officers.
7. Since you are a corporation, you must submit a complete copy of your original Articles of Incorporation and any amendments thereto that show evidence that they have been filed with and approved by the State in which you are incorporated.
8. Provide minutes of all board meetings since your creation.

9. Regarding your fundraising:
 - a) Provide copies of all solicitations the organization has made regarding fundraising.
 - b) Provide copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, webpage solicitations.
 - c) Provide a listing and details regarding all fundraising expenses.
10. Provide actual financial information for 2010 and 2011 and a budget for 2012. Provide details regarding each item listed
11. Regarding your current and planned employees:
 - a) How many employees do you have?
 - b) Indicate the total of full-time, part-time, and seasonal employees?
 - c) If employees are part-time, when did/do they work?
 - d) If employees are seasonal, during what season (months) did/do they work?
 - e) How many employees are/were devoted to each activity of the organization throughout the year?
12. Regarding your current and planned volunteers:
 - a) How many volunteers do you have?
 - b) How many volunteers are/were devoted to each activity of the organization throughout the year?
 - c) How many and what sort of resources are devoted to volunteer activities?
13. You will educate the public through organized Town Hall Meetings, traveled to Washington D.C. to participate in rallies, and enlisted volunteers to work the November 2009 polling places. In addition you plan to develop a comprehensive network of _____ as well as develop a campaign for the _____ initiative. To help us gain a better understanding of your organization, please provide the following estimates:
 - a) Provide a listing of all of your past activities. Indicate the percentage of your time spent conducting the activity (total of all activities should equal 100%) and the percentage of your funds spent conducting the activity (total of all activities should equal 100%)
 - b) Provide a listing of all of your planned activities. Indicate the percentage of your time you will spend conducting the activity (total of all activities should equal 100%) and the percentage of your funds you will spend conducting the activity (total of all activities should equal 100%)
14. You are a membership organization. Provide details regarding all members' fees and benefits.
15. Provide a list of all issues that are important to your organization. Indicate your position regarding each issue.

16. Do you publish or distribute materials or conduct other communications that are prepared by or reviewed by another organization? If yes, explain and provide a copy of such materials or communications.
17. Will you publish and/or distribute material in favor of any candidate for public office? If yes, explain.
18. Do you or will you rate candidates? If yes, explain.
19. Do you or will you endorse candidates? If yes, explain and answer the following:
 - a) Provide your endorsement criteria.
 - b) Once a candidate is endorsed, how does your organization handle the endorsement?
 - c) Provide a list of all candidates you have endorsed.
 - d) Does your organization notify the candidate of the endorsement? If yes, explain.
 - e) Do you provide any materials to candidates, which they may use to promote their candidacy? If so, please describe and provide copies of those materials.
20. Are you associated with any other IRC 501(c)(3), 501(c)(4), 527 organizations or, any organizations that may have an application for exemption currently pending with the IRS? If yes:
 - a) Provide the name, federal employer identification number and address of each organization.
 - b) Describe in detail the nature of the relationship(s).
 - c) Do you work with the organization(s) regularly?
 - d) Provide copies of all related contracts with such organizations.
 - e) Describe the nature of all contacts with the organizations.
 - f) Do you share employees, volunteers, resources, office space, etc. with the organization(s)? If yes, explain.
21. The lease submitted with your application for exemption listed the tenant as the _____
Please provide the following information:
 - a) Describe in detail the nature of the relationship(s).
 - b) Do you work with the organization(s) regularly?
 - c) Provide copies of all related contracts with such organizations.
 - d) Describe the nature of all contacts with the organizations.
 - e) Do you share employees, volunteers, resources, office space, etc. with the organization(s)? If yes, explain.
22. Are you associated with any for-profit organizations? If yes:
 - a) Provide the name, federal employer identification number and address of each organization.

- b) Describe in detail the nature of the relationship(s).
 - c) Do you work with the organization(s) regularly?
 - d) Provide copies of all related contracts with such organizations.
 - e) Describe the nature of all contacts with the organizations.
 - f) Do you share employees, volunteers, resources, office space, etc. with the organization(s)? If yes, explain.
- 23. Do you engage in business dealings with any candidate(s) for public office or an organization associated with the candidate, such as renting office space or providing access to a membership list? If so, describe the relationship in detail and provide contracts or other agreements documenting the business relationship.
- 24. Has any person or organization provided educational services to you? If yes, provide the following:
 - a) The name of the person or organization.
 - b) A full description of the services provided.
 - c) The political affiliation of the person or organization.
- 25. Provide details regarding all training you have provided or will provide. Indicate who has received or will receive the training and submit copies of the training material.
- 26. You will conduct rallies, educational events, discussion groups or similar events. For each event you have conducted:
 - a) Indicate the date and location.
 - b) Describe the nature of the event.
 - c) Provide copies of all materials distributed with regards to the event.
 - d) List all event revenue.
 - e) List all event expenses.
- 27. Provide the following information about the organization's _____ program:
 - a) Provide a copy of the web based materials associated with the _____ program.
 - b) How many small groups have been formed through the _____ program?
 - c) Identify any national organizations you have formed coalitions with through _____ program.
- 28. You stated the organization will film a short documentary. Provide copies of any completed documentaries including printed transcripts.
- 29. You stated through its _____ it will endeavor to expand training to _____ is the training currently provided by.

Attachment #3

ORGANIZATION #2

501(c)(4) Application

Application Submitted: 9/24/2010

Internal Revenue Service

Department of the Treasury

COPY

Date: February 9, 2012

Employer Identification Number:

Person To Contact – Group #:

Contact Telephone Numbers:

WASHINGTON, DC 20007

Response Due Date:
March 5, 2012

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

FEB 15 2012

Letter 1312 (Rev. 05-2011)

Additional Information Requested:

1. Please state whether you had applied for tax exemption from Federal income tax previously. If yes, please explain and provide copies of any previous correspondences with the Internal Revenue Service.
2. Please submit a chronology and description of your organization's activities for the coming year.
3. Please submit copies of any brochures, pamphlets, newsletters, fliers, advertisements, or any literature regarding your organization.
4. Will you engage in lectures, classes, workshops, or seminars open to the public or to members? If yes, please submit the following:
 - a. State where your programs or activities will be conducted.
 - b. Describe the types of lectures, classes, workshops, or seminars. Typical topics covered, length of seminars, how often held, etc.
 - c. Submit documentation or sample of materials used in your lectures, classes, workshops, or seminars.
 - d. Explain how the amount of the fees to be charged will be determined. Will they be based on a rate above your cost, at cost, or below cost?
 - e. Do you propose to engage a paid staff of employees to arrange classes, workshops, seminars or lectures, etc.? Explain briefly.
 - f. Do you propose to offer an honorarium or a prescribed fee to lecturers? If yes, how is it determined?
 - g. How are your lectures, classes, seminars or conferences arranged?
 - h. Provide a schedule or a draft of your upcoming events.
 - i. State the percentage of your total gross receipts that you expect will be derived from this activity.
5. Regarding your activities involving the internet, please submit the following information:
 - a. Who selects the materials on your website and what are the criteria for making that selection? Please explain fully.
 - b. How does your website further your exempt purpose?
 - c. Is your website free of charge to the public? If not, what is the basis for charging your fee?
 - d. Is/will your website be copyrighted? If yes, in whose name will the copyright be held?
 - e. Who develop the website and has control over the data generated by the website? If third party involved, please submit a copy of the contract or agreement, which should clearly state who owns the data that is generated.
 - f. How does your organization's website differ from a regular commercial website?
 - g. Does your organization sell advertising on your website for commercial companies? If yes, please explain in detail and state the percentage of total annual gross receipts that you expect to derive from sale of such advertising.
 - h. Do you sell any products, etc. on your website for your organization? If yes, please explain in detail and list the products or types of products you sell.
6. Please provide copies of your current web pages from your website that is available only to your members.

7. Have you conducted or will you conduct rallies or exhibitions for or against any public policies, legislations, public officers, political candidates, or like kinds? Provide the following for all the events you have conducted and will conduct for 2012 and 2013:
- The time, location, and content schedule of each rally or exhibition
 - Provide copies of handouts you provided or will provide to the public.
 - The names of persons from your organization and the amount of time they have spent or will spend on the event. Indicate the name and amount of time they spent on the event. Indicate the name and amount of compensation paid or will be paid to each person. If you did not pay or will not pay anyone, then, indicated the event was or will be conducted by volunteers.
 - Indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.
 - Expense amounts incurred for these activities for 2010 and 2011
 - Expense amounts to be incurred for these activities for 2012 and 2013
8. Please describe the nature and extent of your legislative/lobbying activities, specifically:
- The legislative/lobbying activities, direct or indirect, that you engaged in or will engage in; and
 - The part of total staff time that is spent in carrying on those activities;
 - The amount of money appropriated and spent for those activities.
9. Have any candidates running for public office spoken or will they speak at a function of your organization?
- If so, provide the names of the candidates, the functions at which they spoke, any materials distributed or published with regard to their appearance and the event, any video or audio recordings of the event, and a transcript of any speeches given by the candidate(s).
 - Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

10. Have you distributed or will you distribute materials or conduct other communications that are prepared by another organization or person? If so, provide the following:
- Copies of materials and contents of communications
 - When and where the distribution has been conducted or will be conducted?
 - Who has distributed or will distribute the materials?
 - Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

11. Will you, or have you ever, conducted voter education activities, including voter registration drives, get out voting drives, or publishing or distributing voter guides? If so, provide the following:
- What is the location, date and time of the events?
 - Who on the organization's behalf have conducted or will conduct the voter registration or get out the vote drives?
 - Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.

- d. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

12. Are you associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, provide the following:

- a. Provide the name, employer identification number, and address of the organizations
- b. Describe in detail the nature of the relationship(s).
- c. Do you work with those organization(s) regularly? Describe the nature of the contacts.
- d. List shared employees, volunteers, resources, office space, etc. with the organization(s).
- e. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

13. Will the organization utilize one of the officer's personal resident for the purpose of directly carrying out its work? If yes, please explain and state how the related expenses will be allocated.

14. Please provide copies of all leases, contracts, and rental, loan, or financing agreements you have entered into.

15. Please explain how you solicit public donations and supports, and provide the following for your fundraising activities:

- a. Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election year and non-election year.
- b. Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, and webpage solicitations.
- c. How much of your organization's budget is spent on fundraising?
- d. What are the sources of the fundraising expenses?
- e. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

16. Please submit copies of the organization's actual financial statements for fiscal years ending December 31, 2007 and December 31, 2011. Please provide a breakdown of your income and expenses rather than lumpsum total.

17. Do you propose to employ any officer, director, or trustee of your organization? If yes, please submit the following information:

- a. List name and title of each such individual.
- b. Describe each individual's duties and responsibilities.
- c. Explain how the amount of each individual's compensation will be determined.

18. Please provide resumes of each of the organization's officers and directors.

19. Will the organization disburse or provide funding to individual or private entity for litigation? If yes, please explain.

20. Please state whether the organization will be or has been involve in any litigation or class-action suit. If yes, please explain.

Attachment # 4

ORGANIZATION #3

Application 501(c)(3)

Application Filed: 7/15/2010

Additional Information Submitted:

**March 2011
November 2011**

COPY

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: February 8, 2012

Employer Identification Number:

Person to Contact – Group #:

Contact Telephone Numbers:

Phone

Fax

Response Due Date:

February 22, 2012

Dear Sir or Madam:

Thank you for the information submitted November 8, 2011 regarding your application for exemption. Unfortunately, we need more information before we can complete our consideration of your application.

Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on the application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter and the enclosed Application Identification Sheet to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.

FEB 13 2012

Additional Information Requested:

1. Provide a print-out of each of your website's pages or proposed website's pages, including any pages with restricted access.
2. Provide details regarding all of your activity on Facebook and Twitter. Also, provide hard copies of all advertising you have conducted using social media outlets.
3. Submit the following information relating to your past and present directors, officers, and key employees:
 - a) Provide a resume for each.
 - b) Indicate the number of hours per month each individual has provided or is providing services to you.
 - c) Provide a description of all the services each individual provides or has provided to you.
 - d) Indicate the total compensation provided to each individual.
 - e) Describe how each compensation package was determined.
 - f) Indicate if any of your current and former officers, directors, and key employees are related to each other (include family and business relationships) and describe the nature of the relationship.
4. List each past or present board member, officer, key employee and members of their families who:
 - a) Has served on the board of another organization.
 - b) Was, is or plans to be a candidate for public office. Indicate the nature of each candidacy.
 - c) Has previously conducted similar activities for another entity.
 - d) Has previously submitted an application for tax exempt status.
5. Do you have a conflict of interest policy? If yes, submit a copy.
6. Provide minutes of all board meetings since your creation.
7. Regarding your fundraising:
 - a) Provide copies of all solicitations the organization has made regarding fundraising.
 - b) Provide copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, webpage solicitations.
 - c) Provide a listing and details regarding all fundraising expenses.
8. Provide actual financial information for 2010 and 2011 and a budget for 2012. Provide details regarding each item listed.

9. Provide a description of the collateral materials used by the organization.
10. Although no salaries and wages on the financial information submitted with your initial application does the organization currently have or plan to have employees? Provide the following information:
 - a) How many employees do you have?
 - b) Indicate the total of full-time, part-time, and seasonal employees?
 - c) If employees are part-time, when did/do they work?
 - d) If employees are seasonal, during what season (months) did/do they work?
 - e) How many employees are/were devoted to each activity of the organization throughout the year?
11. Regarding your current and planned volunteers:
 - a) How many volunteers do you have?
 - b) How many volunteers are/were devoted to each activity of the organization throughout the year?
 - c) How many and what sort of resources are devoted to volunteer activities?
12. In your Form 1023 application, you stated you conduct the following activities:
Provide the following information for all the events you have held from inception to the present:
 - a) The time, location, and content schedule of each event
 - b) A copy of the handouts you provided to the audience
 - c) Identify the education and workshop materials that instructors used
 - d) The names and credentials of the instructors
 - e) If speeches or forums were conducted in the event, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members were paid, provide the amount paid for each person. If not, please indicate that they volunteered to conduct the event.
 - f) The names of persons from your organization and the amount of time they spent on the event. Indicate the name and amount of time they spent on the event. Indicate the name and amount of compensation that was paid to each person. If no one was paid, indicate this event was conducted by volunteers to each person.
13. Provide the following information for all the events you will conduct for 2012 and 2013:
 - a) The time, location, and content schedule of each event
 - b) Identify handouts you provided to the audience
 - c) Identify workshop materials that instructors will use

- d) The names and credentials of the instructors.
 - e) If speeches or forums will be conducted in the event, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members will be paid, provide the amount will be paid for each person. If not, please indicate they volunteered to conduct the event.
 - f) The names of persons from your organization and the amount of time they will spend on the event. Indicate the name and amount of time they will spend on the event. Indicate the name and amount of compensation that will be paid to each person. If no one will be paid, indicate this event will be conducted by volunteers to each person.
 - g) Indicate the percentage of time and resources you will spend on these activities in relation to 100% of all your activities.
14. You have stated you will recruit individuals to serve as election administration workers or as election observers. Provide the following information:
- a) Explain the process used to recruit individuals willing to fill these positions.
 - b) Provide copies of any materials distributed to recruit individuals.
 - c) How many individuals have you trained to date?
 - d) How many individuals are currently undergoing training?
 - e) How many elections have you provided election workers for?
 - f) What percentage of individuals recruited go on to serve as administration workers?
 - g) What percentage of individuals recruited go on to serve as election observers?
 - h) What percentage of individuals recruited do not go on serve as election workers?
 - i) Do you only train election workers for the state of Texas? If yes, do you plan to expand your activities to other states? List the states in which you plan to train election workers. If you have already expanded provide a list states in which you are currently training election workers.
 - j) Are there any regulations that govern the role of an election observer? If yes, provide copies of the applicable regulations.
15. You stated that election administration workers are trained by local election administrators. Provide the following information:
- a) Do election administration workers receive any training from you? Explain the training received.
 - b) If training is received from you how does this training differ from the training received by election observers?
 - c) When do the election administration workers receive this training: prior to the training, concurrently with the training, or after receiving the training from local election administrators?

16. You have stated the organization's materials are carefully vetted by _____ experts. Provide the names and credentials of the _____ experts used by the organization.
17. You have stated the organization's _____ center will be staffed with _____ experts. Provide the names and credentials of the _____ experts used by the organization.
18. How many reports have _____ made to the _____ center? Of those reports how many have been elevated to the appropriate _____ official to correct the violation?
19. You have stated the organization may participate in _____ compel compliance with: _____. Provide a description of any of your organization's involvement in _____ to date.
20. Provide the following information about the organization's activity:
 - a) Explain the process used to recruit individuals.
 - b) Provide copies of any materials distributed to recruit individuals.
 - c) Describe the training process used by the organization. Provide a copy of any training materials used.
 - d) How many individuals have you trained to date?
 - e) How many individuals are currently undergoing training?
 - f) Identify the states in which the organization conducts, has conducted, or plans to conduct this activity.
 - g) In how many jurisdictions have you conducted this activity?
21. You stated the organization has developed, through volunteers, _____ capability for downloading the _____ then reviewing and identifying potential _____. Is there any intellectual property rights associated with this _____? If so, who owns those rights?
22. You stated the organization is lessening the burdens of government by assisting governmental bodies in accomplishing their requirements under law. You go on to state the organization's review _____ directly fulfills the _____ imposed on government and offers a resource to accomplish this task that many local jurisdictions lack. Provide the following information:
 - a) Has the organization ever been approached by a jurisdiction specifically to perform a review of registration lists? If so, please explain.
 - b) To your knowledge has a

of _____ to assist them in discharging their statutory obligation to _____
If so, please explain.

c) In how many jurisdictions have you presented your _____

23. You stated you will provide _____ training. In addition to _____ will you, or have you ever, conducted get out to vote drives, or publish or distribute voter guides? Provide the following information:
 - a) What is the location, date and time of the events?
 - b) Who on the organization's behalf have conducted or will conduct the voter registration or get out to vote drives?
 - c) Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.
24. You stated the organization may create documentaries. Provide copies of any completed documentaries including printed transcripts.
25. In regards to the organization's public education activities you state the organization seeks to educate the public and influential individuals. Define influential individuals.
26. You stated the organization hopes to raise awareness of voter integrity issues through strategic outreach efforts including media relations. Has your organization engaged in any activities with the news media? If so, please describe those activities in further detail and, if available, provide copies of articles printed or transcripts of items aired because of that activity. News media activity may include the following:
 - a) Press releases
 - b) Interviews with news media
 - c) Letters to the editor
 - d) Op-ed pieces
27. In your initial application you stated _____ would like to see _____ legislation to support the use of a _____, 20% of the budget would be used to support printing to educate on the cause. In your most recent response you stated: _____ provide information on its findings to elected officials. Provide the following information regarding these activities:
 - a) Provide copies of all communications, pamphlets, advertisements, and other materials distributed by you regarding the legislation.
 - b) Do you conduct media advertisements lobbying for or against legislation? If yes, provide copies of any radio, television, or internet advertisements relating to the organization's lobbying activities.
 - c) Do you directly or indirectly communicate with members of legislative bodies? If so, explain the amount and nature of the communication.

28. Are you a membership organization? Provide details regarding all members' fees and benefits.
29. Do you publish or distribute materials or conduct other communications that are prepared by or reviewed by another organization? If yes, explain and provide a copy of such materials or communications.
30. Will you publish and/or distribute material in favor of any candidate for public office? If yes, explain.
31. Do you or will you rate candidates? If yes, explain.
32. Do you or will you endorse candidates? If yes, explain and answer the following:
 - a) Provide your endorsement criteria.
 - b) Once a candidate is endorsed, how does your organization handle the endorsement?
 - c) Provide a list of all candidates you have endorsed.
 - d) Does your organization notify the candidate of the endorsement? If yes, explain.
 - e) Do you provide any materials to candidates, which they may use to promote their candidacy? If so, please describe and provide copies of those materials.
33. You have indicated you have a close connection with:
 - a) Provide the address of the organization.
 - b) Describe in detail the nature of the relationship.
 - c) Do you work with the organization(s) regularly?
 - d) Provide copies of all related contracts with such organizations.
 - e) Describe the nature of all contacts with the organizations.
 - f) Do you share employees, volunteers, resources, office space, etc. with the organization(s)? If yes, explain.
34. Are you associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If yes:
 - a) Provide the name, federal employer identification number and address of each organization.
 - b) Describe in detail the nature of the relationship(s).
 - c) Do you work with the organization(s) regularly?
 - d) Provide copies of all related contracts with such organizations.
 - e) Describe the nature of all contacts with the organizations.
 - f) Do you share employees, volunteers, resources, office space, etc. with the organization(s)? If yes, explain.

35. Are you associated with any for-profit organizations? If yes:
 - a) Provide the name, federal employer identification number and address of each organization.
 - b) Describe in detail the nature of the relationship(s).
 - c) Do you work with the organization(s) regularly?
 - d) Provide copies of all related contracts with such organizations.
 - e) Describe the nature of all contacts with the organizations.
 - f) Do you share employees, volunteers, resources, office space, etc. with the organization(s)? If yes, explain.
36. Do you engage in business dealings with any candidate(s) for public office or an organization associated with the candidate, such as renting office space or providing access to a membership list? If so, describe the relationship in detail and provide contracts or other agreements documenting the business relationship.
37. Has any person or organization provided educational services to you? If yes, provide the following:
 - a) The name of the person or organization.
 - b) A full description of the services provided.
 - c) The political affiliation of the person or organization.
38. Have you conducted candidate forums at which candidates for public office were invited to speak? If yes, provide the following:
 - a) Details, including the nature of the forums
 - b) The candidates invited to participate
 - c) The candidates that did participate
 - d) The issues discussed
 - e) The time and location of the event.
 - f) Copies of all materials distributed regarding the forum and provided at the forum, including any internet material discussing or advertising the forum.
39. Have any candidates for public office spoken at a function of the organization other than a candidate forum? If yes, provide the following:
 - a) The names of the candidates
 - b) The functions at which they spoke
 - c) Any materials distributed or published with regard to their appearance and the event
 - d) Any video or audio recordings of the event
 - e) A transcript of any speeches given by the candidate(s)

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201
ATT:

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202
ATT

Letter 2382 (5-2011)
Catalog Number 57829T

*Attachment #
5*

ORGANIZATION #4

501(c)(4) Status

Application Submitted: 10/27/2009



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

**COPY FOR YOUR
INFORMATION**

Date: February 23, 2012

Employer Identification Number:

Person to Contact and ID Number:

Contact Telephone Number:

FAX Number:

Response Requested By:

DUE DATE: March 16, 2012

Dear Applicant:

We have reviewed your application for exempt status under section 501(c)(4) of the Internal Revenue Code and found that additional information is needed to help determine whether you are tax exempt. To complete our consideration we need the following information over the signature of one of your principal officers or directors.

1. Provide a current list of your directors, officers, key employees, five highest paid employees (if different from key employees), and five highest paid independent contractors and their compensation from you.
2. Submit copies of your Forms 990 for 2009 and 2010. Also submit copies of any Form 1120-POL you have filed.
3. Provide audited financials for 2009 and 2010, if available.
4. Provide Statements of Revenue and Expenses for 2009, 2010, 2011 (actuals) and estimates for 2012. Use the format of Form 1024, Part III, adding the following details for exempt function expenditures (Line 9): Break out and separately list expenses by key issue, date, type of activity, and geographic location.
5. Submit current copies of your website. Also supply a list of links to other websites from your website.
6. For 2009, 2010, and 2011, submit copies of emails you distributed and indicate the key issue, date, and target audience for each.
7. Submit copies of vote audits and congressional ratings you have conducted from 2009 to the present. For each of these audits or ratings list the key issue(s) you were identifying.
8. Provide copies of academic research projects and studies (a) you have supported financially or (b) you have relied on from other sources. Provide a separate list for each of these projects, studies, or sources which includes the date funded, received, the

target location, and the key issue(s) involved.

9. For public seminars you have held, provide dates, locations, key issues, agendas, list of speakers, attendees, and copies of materials you provided.
10. Submit transcripts of ads you disseminated in 2009, 2010, and 2011. For each ad, identify how it was transmitted (e.g. internet, cable, broadcast, newspaper, newsletter, etc.), the key issue, location of the communication, target of the communication, date, and whether there was legislative vote, a primary, caucus, or election pending, and if so, the date of such pending vote, primary, caucus, or election.
11. Provide a list of contributors of \$2,000 or more in each year 2009 – 2011.
12. For each year 2009 – 2011, provide the number of your current members, separated by membership categories (if any), the different categories of membership, and a copy of membership materials and benefits you provide.
13. Submit an updated Form 2848, Power of Attorney and Declaration of Representative for 2012.

The information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

If the additional information shows you qualify for exempt status, we will send you an exemption letter. If the additional information shows you do not qualify for exempt status, we will explain our decision and provide information about the appeal rights available to you.

Please respond by the date shown in the heading of this letter. If you need an extension of time to respond, or if you have any other questions about this matter, please call me at the above telephone number. You will expedite our receipt of your reply by using the following address on the envelope. If it is convenient, you may fax your reply (up to 10 pages) using the fax number shown in the heading of this letter.

If you do not provide the requested information in a timely manner, it will be considered by the Service as a failure to take all reasonable steps to secure the ruling you requested. Under Code section 7428(b)(2), your failure to take all reasonable steps to secure the ruling requested in a timely manner may be considered as a failure to exhaust the administrative remedies available to you within the Service, and thus may preclude the issuance of a declaratory judgment in this matter under the judicial proceedings of Code section 7428.

Thank you for your cooperation. We have sent a copy of this letter to your representatives as indicated in your power of attorney.

Sincerely,

FOLEY
FOLEY & LARDNER LLP

June 3, 2011

VIA FACSIMILE (202) 283-9462

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WRITER'S DIRECT LINE
202.295.4081
cmitchell@foley.com EMAIL

CLIENT/MATTER NUMBER
999100-0130

Internal Revenue Service
Washington, DC 20224

Re: Status of Form 1024 Application of

Dear

We have spoken on a couple of occasions during the past several months when I have called to inquire as to the status of the application for recognition of exempt status submitted by my client. After our last conversation, you kindly left a message advising me that the application is somewhere in the IRS undergoing 'review'.

This is to memorialize the chronology of the dates involving application and the utterly mystifying failure of the IRS to conclude its review of the application for exempt status.

October 27, 2009: filed its Form 1024 with the IRS
November 16, 2009: received a letter from the IRS advising that the application had been received and assigned for review
June 14, 2010: received a letter from the IRS asking for additional information
July 20, 2010: submitted its response to the IRS providing the requested additional information

Since our submission last summer, I have made several phone calls to the IRS inquiring as to the status of the application. You have spoken to me about this situation and your message to me several weeks ago was that 'someone else' was / is reviewing the application. That is all the information I have been able to glean from my inquiries.

It has been more than a year and a half since we submitted this application. The organization has continued to function as a social welfare organization, which it is legally permitted to do, but we continue to be asked by the state regulators for a copy of our IRS Letter of Determination of Exempt Status.

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4820-3391-1309.1



June 3, 2011
Page 2

This delay is more than unusually long. I am beginning to believe that the reason for the delay is politically motivated because my client has actively opposed the Obamacare legislation. is permitted under the regulations of the IRS to engage in unlimited legislative activities and lobbying, so it is puzzling as to why its grassroots lobbying and legislative activities would be of any interest or concern to the IRS. Is the opposition to Obamacare and the takeover of America's healthcare system by the government the reason that this application has been held up and not approved? I certainly hope that is not the case, but if it is, the IRS should simply advise me of that fact so that we can initiate the necessary appeals.

is and has engaged solely in legislative and grassroots educational activities as outlined in its application for exempt status. We are more than happy to provide whatever additional documents or documentation you deem necessary or appropriate to complete your review.

I would appreciate it if you could please forward this to the person(s) who are assigned to process the application, and advise me as to who that individual is and how I may contact him/her to find out the reason(s) for this delay and to clear any obstacles or answer any questions that may exist.

I am going to be traveling out of the country from Monday, June 6, 2011 until June 20, 2011. During that time, hopefully, there can be some internal effort within the IRS to locate my client's application and to provide me upon my return the identity of the analyst(s) who are working on this application. Then, I can inquire as to what information is needed to finalize this process and complete the review by the IRS.

Please feel free to contact me at (202) 295-4081 after June 20, 2011. I trust that we can resolve this situation before the one-year anniversary of our last submission to the IRS on July 20, 2010. Surely a year is long enough to process a 3-page letter.

Thank you for your assistance.

Sincerely,

Cleta Mitchell, Esq., Counsel

cc:



FOLEY & LARDNER LLP

Attachment # 6

November 8, 2011

ATTORNEYS AT LAW
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CLIENT/MATTER NUMBER
 101232-0101

Certified Mail
Return Receipt Requested

Mr. Ron Bell
 Internal Revenue Service
 P.O. Box 2508—Room 4511
 Cincinnati, OH 45201

Re: Exemption Application for True the Vote (EIN: 27-2860095)

Dear Mr. Bell:

This letter is in follow-up to our phone conversation of October 12, 2011. We discussed True the Vote (EIN: 27-2860095) (formerly known as KSP/True the Vote) ("True the Vote" or the "Organization") and its Application for Recognition of Exemption under Section 501(c)(3) (IRS Form 1023).

True the Vote's Exemption Application was submitted on or about July 15, 2010. On February 15, 2011, the Internal Revenue Service sent the Organization a request for more information (Letter 1312). On March 7, 2011, the Organization submitted responses to these questions to the Cincinnati IRS office. On March 8, 2011, the Organization furnished a Certificate of Correction (evidencing that recommended changes had been made to the Organization's Certificate of Formation) to the Cincinnati office.

You have advised us that the Exemption Application has been pending in the Cincinnati office since that date and that the Exemption Application has been forwarded to the Washington, DC office for additional review. The Cincinnati office is waiting for a response from the Washington, DC office.

The purpose of this submission is to amplify and clarify information regarding the activities of True the Vote and to provide specific legal precedent and authority in support of the recognition of True the Vote's charitable purposes in order to finalize and facilitate recognition of exempt status by the IRS. We kindly request that you forward a copy of this submission (as provided) to the appropriate person in the Washington, D.C. office.

After the last submission was made to the IRS, the Organization changed its name from "KSP/True the Vote" to simply "True the Vote". The Certificate of Amendment to the Certificate of Formation is attached. This change was made only to simplify the Organization's name and branding and does not reflect any changes in the purposes or activities of the Organization.

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March 21, 2013

By Email and U.S. First-Class Mail*Attachment #1*

Steven T. Miller, Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Unlawful Disclosure of Tax-Exempt Organizations Confidential Taxpayer Information

Dear Acting Commissioner Miller:

As attorneys representing tax-exempt organizations, we are writing to express our grave concern about recent unlawful disclosures of pending applications and unredacted tax returns of certain tax-exempt organizations. We request that the Internal Revenue Service take immediate steps to determine how these disclosures of confidential taxpayer information occurred, to take any and all necessary steps to prevent similar disclosures in the future, and to make a detailed public statement describing these steps to reassure the tax-exempt community.

Recent reports and discussions make it clear one or more IRS employees responded to a public information request from the news organization ProPublica by giving ProPublica pending applications and subsequent extensive correspondence with the IRS regarding the applications from a number of organizations seeking recognition of their exemption from tax under Section 501(c)(4) of the Internal Revenue Code.

As you know, application documents are subject to public disclosure after recognition of the organization's tax-exempt status, but still-pending (or withdrawn) applications are not. This restriction recognizes that pending applications are often incomplete and may include information about proposed activities that are questioned by the IRS determination agent and that the organization subsequently has a chance to clarify or eliminate from its plans before they are made public.

It is clear that the IRS recognized that the applications should not have been released to ProPublica. Following the publication of the first article describing the disclosed application of one of the organizations, IRS employees contacted other organizations to warn them that their applications and associated materials "probably" had likewise been improperly disclosed. Indeed, ProPublica subsequently published additional confidential taxpayer information for a number of other organizations with pending applications.

These disclosures come on the heels of another recent allegation of an unredacted copy of a Form 990 annual information return (including an unredacted Schedule B showing major donors to the organization) for a 501(c)(4) organization that was released by someone at the IRS (or at least someone with access to IRS files).

All of these recent disclosures appear to have involved organizations with a conservative political ideology (although we are aware of similar improper disclosures that involved both conservative and liberal or progressive organizations in the past).

We are concerned that these recent reports will have significant negative consequences. Organizations fearful of such disclosures may be less forthcoming and intentionally vague about their activities on applications for exemption, Form 990s, and other filings. Donors may be deterred from giving if they fear their contributions might be improperly disclosed.

Moreover, organizations that espouse particular ideologies may be convinced – and may persuade others – that the IRS or its employees are biased against those ideologies and are engaged in a deliberate effort to undermine the organizations through deliberate improper disclosures. These results are all possible, whether improper disclosures by the IRS are malicious or merely the result of unintentional errors by agency staff.

The IRS is clearly aware that it has a problem – as demonstrated by the calls to organizations that were the victims of the disclosure to ProPublica – but the IRS needs to do more. The recent spate of improper disclosures requires a public statement to make it clear that the IRS has identified how these disclosures came about and describing the concrete steps the IRS has put in place to prevent any further such disclosures. Inaction or silence by the IRS fuels both fear of further disclosures and narratives alleging IRS ideological bias.

We urge you to address these issues promptly and forcefully. This is a public confidence issue where the Service is uniquely-positioned to reassure the public. It should.

Sincerely,

Heidi K. Abegg, Webster, Chamberlain & Bean, LLP
 Jeffrey Altman, Whiteford Taylor Preston, LLP
 Robert Benton, Wiley Rein LLP
 Catherine Bitzan Amundsen, Gray Plant Mooty
 Jennifer Reedstrom Bishop, Gray Plant Mooty
 Karen Blackistone Oaks, Gober Hilgers PLLC
 James Bopp, Jr., The Bopp Law Firm, PC
 Eve Borenstein, Borenstein and McVeigh Law Office LLC
 Leonard M. Cole, Cole Nonprofits Law, LLC
 Gregory L. Colvin, Adler & Colvin
 Sarah Duniway, Gray Plant Mooty
 Alan P. Dye, Webster, Chamberlain & Bean, LLP
 Chris Gober, Gober Hilgers PLLC
 Gail Harmon, Harmon, Curran, Spielberg & Eisenberg, LLP
 The firm of Holtzman Vogel Josefiak PLLC
 Greg A. Larson, Gray Plant Mooty
 D. Eric Lycan, Steptoe & Johnson PLLC

Cleta Mitchell, Foley & Lardner, LLP
 Stefan Passantino, McKenna Long & Aldridge LLP
 John Pomeranz, Harmon, Curran, Spielberg & Eisenberg, LLP
 Hank Raattama, Akerman Senterfitt
 Emily Robertson, Robertson Law Office, LLC
 Janice Rodgers, Quarles & Brady LLP
 Laura Solomon, Laura Solomon & Associates.
 Charles M. (Chip) Watkins, Webster, Chamberlain & Bean, LLP
 Jeffrey L. Yablon, Pillsbury Winthrop Shaw Pittman LLP
 Barnaby Zall, Weinberg, Jacobs & Tolani, LLP

[Firm names are listed for identification purposes only. Inclusion of the firm's names does not indicate and should not be understood to imply endorsement of the views expressed in this letter by any of these firms or by other attorneys who are part of these firms but not listed here.]

cc: Lois G. Lerner, Director, Exempt Organizations Division, Internal Revenue Service
 William J. Wilkins, Chief Counsel, Internal Revenue Service
 The Honorable Max Baucus, Chair, U.S. Senate Finance Committee
 The Honorable Orin Hatch, Ranking Member, U.S. Senate Finance Committee
 The Honorable Dave Camp, Chair, U.S. House of Representatives Ways and Means Committee
 The Honorable Sander Levin, Ranking Member, U.S. House of Representatives Ways and Means Committee

FOLEY
FOLEY & LARDNER LLP

RECEIVED
INTERNAL REVENUE SERVICE

2013 MAY 13 AM 9:06

May 10, 2013

Attachment #8

ATTORNEYS AT LAW
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202.295.4081
emitchell@foley.com EMAIL

CLIENT/MATTER NUMBER
999100-0130

VIA HAND DELIVERY

Mr. Steven T. Miller, Acting Commissioner
Internal Revenue Service
10th St & Pennsylvania Ave, NW
Washington, DC 20004

Ms. Lois Lerner
Director, Exempt Organizations
Internal Revenue Service
10th St & Pennsylvania Ave, NW
Washington, DC 20004

Re: Remedies for Mistreatment of Conservative Organizations by IRS

Dear Commissioner Miller and Director Lerner:

The news today that Director Lerner has confirmed that citizens organizations who were deemed by the IRS to be affiliated with the 'tea party' movement were singled out for specific additional scrutiny and refusal to grant exempt status comes as no surprise to those of us who have been wrangling with the IRS over this troubling issue for several years now.

We appreciate the honesty of Director Lerner in admitting the wrongdoing by the IRS who politicized the review process of applications for exempt status of nonprofit organizations whose mission is the support of conservative policy positions.

However, the apology falls far short of a remedy. Now that you have confirmed what many of us have known was happening for the past several years, there are a number of follow up comments and questions.

First, I represent a number of these citizens organizations targeted by the IRS and none of them have received their letters of exempt status. As of this writing, some of the organizations have been waiting since 2009 to receive their letters, despite having responded to multiple, exhaustive and repeated requests for additional information and materials. We have complied with every request propounded by your agency, yet after months and years, the organizations have yet to receive their letters of determination of exempt status.

Now that the IRS has admitted that these groups were unfairly and illegally targeted because of their political views, may we assume that the letters of determination of exempt status will be issued forthwith?

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WASHINGTON, D.C.

4851-4872-1428.1



Mr. Steven T. Miller
 Ms. Lois Lerner
 May 10, 2013
 Page 2

I will be happy to furnish a list of the organizations I represent who have patiently and diligently awaited proper treatment by the IRS and we would respectfully request that instead of an apology, you send them their letters of determination of exempt status which have been unreasonably and improperly withheld and delayed.

Further, this experience was too widespread to be the result of a few 'low level' individuals acting on their own. Rather, the burdensome questions and exhaustive reviews – and the extreme delays in processing applications for exempt status were and continue to be too comprehensive and involved more than one IRS office, *including the IRS offices in Washington DC*, to be considered 'isolated'. The fact that nearly 100 citizens groups received identical, burdensome questionnaires from IRS offices across the nation demonstrates that this was *not* a few 'low level' employees responsible for the effort. And, indeed, more than one agent in Cincinnati has advised me that his/her instructions regarding the processing of my 'tea party' related organization client(s) were coming from the Washington, DC office.

So my question is: How can you claim that this illicit strategy employed against conservative, patriotic Americans was a 'low level' employee effort in the Cincinnati office when agents over the past several years have advised me that the directions were coming from a special task force established in the Washington offices of the IRS and when the letters and mistreatment was not confined to applicants dealing with the Cincinnati office?

What actions have been taken to identify ALL the IRS employees engaged in this scheme to target conservative groups and withhold processing of their applications for exempt status? What disciplinary actions have been taken regarding those employees? And what steps have been taken to ensure that this doesn't happen in the future?

The admission by the IRS that what many of us knew to be the truth is a first step in addressing the problem. But it is only a first, tiny step. There is much more to be disclosed in order to ensure this type of political persecution is permanently ended.

Please contact me at (202) 295-4081 so that I may go over the list of my client organizations who have been mistreated by your agency and who are long overdue to receive their improperly withheld letters of determination of exempt status.

I will look forward to your immediate response. Thank you.



Mr. Steven T. Miller
Ms. Lois Lerner
May 10, 2013
Page 3

Sincerely,

/s/ Cieta Mitchell

Cieta Mitchell, Esq.

Mr. JORDAN. Ms. Gerritson.

STATEMENT OF BECKY GERRITSON

Ms. GERRITSON. Thank you so much for inviting me here to speak. I can't tell you how much I do appreciate you holding this hearing.

Unfortunately, I'm not here to carry a message of joy or thanksgiving. I'm in absolute grief for my beloved country. Eight months ago, I along with five other victims, eloquently laid out our cases about the IRS abuses in a committee just like this. And at that hearing, we learned details about the IRS leaking confidential donor information to opposition groups. When proven, this is a felony. We learned of serious constitutional violations of the First and Fifth Amendments. We witnessed multiple violations of the Administrative Procedure Act, as well as violations of the Internal Revenue Code.

Lois Lerner outright lied to the American people, blaming the scandal on a few rogue agents in Cincinnati, knowing full well that the targeting involved IRS offices across the country, including her very own office in Washington, D.C. Lois Lerner took the Fifth for a reason. Government employees don't go rogue en masse. Their orders originate somewhere.

Yet even with all of these known violations of the law, no one has been blamed, shamed, fired, arrested, or brought to justice. And because of that, I have to ask, how many people in Congress are taking this seriously?

Since my last testimony in Congress, I still have not been contacted by the FBI. The FBI told The Wall Street Journal that no one would be charged with a crime. Yet they haven't even interviewed the witnesses. Are you going to let them get away with this? If so, then I must say it again, my government has forgotten its place. It appears that many in Washington fear regular citizens standing up for constitutional, limited government.

Why in America is it now considered a threat to our government to study the founding documents and to advocate for responsible spending? Why is giving out copies of the Constitution, discussing pending legislation, or even creating legislative score cards a threat to this administration? Obviously, these activities are viewed as subversive to their agenda. Otherwise they wouldn't have tried to stop us.

In my previous testimony, I explained that our application was complete and accurate. We easily qualified for a 501(c)(4) status. Yet, that did not stop the IRS from demanding information they were not entitled to, unconstitutional requests that violated even their own rules.

The information they demanded from us had nothing to do with our tax status. Why must the IRS know who is coming to our meetings? Why did they need to have copies of every speech ever given and the credentials of those speakers? Why did they need to know who our donors were? There is clearly something wrong with this.

The IRS' targeting of the Wetumpka TEA Party and other conservative and religious groups is profoundly disturbing. I'm offended that a Member of Congress, of the United States Senate, would continually request the IRS to go after Americans like me

because they do not agree with our values. This is unprecedented. Never before has the Federal Government tried to muzzle everyday Americans solely because of their political view. The governments of Third World nations intimidate and harass dissenting citizens. It does not happen in the land of the free until recently.

It's shocking. It's pathetic. It's infuriating and depressing. But most troubling of all, is Congress has not stopped this. It's actually gotten worse. During these past 8 months Congress has quietly sat by while the IRS has proposed to cover up their targeting by re-writing the rules for 501(c)(4)s, rules which are an ardent attempt to shut us down completely. One of our most sacred fundamental rights in this country is freedom of speech, but the IRS under this administration wants to strike out 226 years of history with a key-stroke.

Under these new rules we are not allowed to use the words oppose, vote, support, defeat, or reject. We're not allowed to mention on our Web site or in any communication that would reach over 500 people even the name of a candidate who is running 30 days before a primary or 60 days before a general election. We are not allowed to mention the name of a political party if they have a candidate running for 60 days before an election. No more voter registration drives, no more conducting nonpartisan get out the vote drives, no creating or distributing voter guides outlining incumbents' voting records. We can't even host candidates for debates or forums less than 60 days before a general election. Our officers and our leaders cannot speak publicly about incumbents, legislation, and/or voting records without jeopardizing our tax status.

Does this sound like the land of the free or the home of the brave to you?

The political targeting carried out by the IRS is a fundamental transformation of the America that we all grew up in. Like Catherine, I am not here as a victim because I refuse to be a victim. I am a born-free American woman, and these abuses of power put all Americans' liberties at risk. Our government is using its agencies as weapons against its own citizens, and history shows that unaddressed abuses of power lead to greater abuses of power.

I, along with my fellow Americans, are looking to you on this committee to restore the faith that you really do represent us. We implore you to use the full force of the law to stop these abuses immediately and to bring to justice not only those who gave the orders, but all who helped carry them out. I want the Federal Government to know and the IRS to know that you will not divide us, you will not conquer us, and we will not be silenced.

Thank you.

Mr. JORDAN. Thank you, Ms. Gerritson.

[Prepared statement of Ms. Gerritson follows:]

PREPARED WRITTEN TESTIMONY OF

Becky Gerritson

Founder and President, Wetumpka TEA Party, Inc.

Subcommittee on Economic Growth, Job Creation & Regulatory Affairs

Committee on Oversight and Government Reform

February 6, 2014

“The IRS Targeting of Wetumpka TEA Party, Inc.”

Hello. Thank you for inviting me to speak. For anyone who knows me, it is not hard to tell that I deeply love this country and the freedom and liberty it symbolizes. The fact that I find myself sitting before you is quite miraculous, but not at all by accident! Unfortunately, I’m not here to carry a message of joy or thanksgiving; I am here in absolute grief for my beloved country.

I appreciate you holding hearings about the IRS and I intend to fully cooperate with you. I mean this with the utmost respect, but I must ask, are some members of Congress taking this targeting of Americans seriously? It is very disturbing for some in Congress and many in the Obama Administration to admit last year that what they did was wrong, argue for an investigation to take place to hold those responsible accountable, and then suggest months later that nothing ever happened and that this was all just a phony scandal. Eight months ago, I along with five other victims of this targeting eloquently laid out our cases before another committee in congress. We spoke in detail of the IRS abuses, Congress held hearings, our attorneys filed a lawsuit, the President said that he was outraged, members of both parties said that this was unacceptable, Attorney General Holder ordered a FBI criminal investigation of the IRS, and now 8 months have gone by, no one has been prosecuted, some members of Congress are calling this a phony scandal, and the President of the United States just told all of America before the Super Bowl this past weekend that not one “smidgen” of corruption ever took place. It appears that he has already made up his mind on the matter, before any real investigation has taken place, before Congress has had their final word in oversight authority, and before my case, along with 40 other groups has had their day in court.

At the last hearing when I testified, we learned the details about the IRS leaking confidential donor information to opposition groups. If true, this is a felony! We also learned of serious Constitutional

violations of the 1st and 5th Amendment rights of many Americans. We learned of multiple violations of the Administrative Procedure Act as well as violations of the Internal Revenue Code.

Government employees don't just go rouge en masse; their orders had to originate somewhere. The original story was that there were just a couple of rogue agents who were confused in a little office in Cincinnati who caused this problem. Everyone knows that this was a lie. There were offices across the country involved with this targeting scheme including members of the US Treasury Department headquarters in Washington, DC.

Even with all of these known violations of law, no one has been officially charged in a criminal investigation, no one has been shamed, fired, arrested, or brought to justice. Lois Lerner took the fifth, left a Congressional hearing room, and then retired with full government benefits.

Since my last testimony before Congress, the FBI has not contacted me. When former FBI Director Muller admitted, in front of the House Judiciary Committee, that he did not know of anyone who was involved in the investigation – why was he not personally held to account?

Why has the Attorney General said that a criminal investigation is ongoing, but someone at the FBI leaked to the *Wall Street Journal* that no one would be charged with a crime? Why has the IRS admitted to the targeting of hundreds of groups who were later discovered to be on an internal BOLO "hit list", and then the IRS was later allowed to unilaterally propose a re-writing of 501c4 rules to permanently achieve the goal of their targeting? Rules, which will in effect, shut down forever the subjects of their targeting scheme.

I am here at your invitation and I am grateful, but I will tell you what I, as a citizen, along with millions standing beside me, want from you—we want, NO, we demand accountability!

What started off as clearly a partisan scheme to silence TEA Party and other conservative organizations has now become a rallying cry for some to publicly request that the IRS double down and finish off their prey. I am an American. I am offended that a member of the United States Senate would continually request that the IRS go after Americans like me because they do not agree with my values.

It appears that many in Washington, DC are threatened by regular citizens who believe in limiting government. So maybe you can understand why I, and millions of my fellow Americans are losing faith in many of those in Congress. We want to know how this ends. We want to know if someone will

really get to the bottom of this scandal. Not one member of Congress should ever declare war on some Americans because they do not respect their Constitutional rights and viewpoints and are unwilling to accept a United States Supreme Court ruling protecting those rights. Again, “I am telling many in my government that you have completely forgotten your place!”

In my previous testimony, I explained that our application was complete and accurate and we clearly qualified for a 501c4 tax-exempt status, yet that didn’t stop the IRS from demanding information they were not entitled to; unconstitutional requests that violated their own rules. The information that they demanded we give them had nothing to do with the status we were seeking. Why must the IRS know who came to our meetings? Why did they need to have copies of every speech ever given and the credentials of our speakers? Why did they need to know who our donors were? None of this was their business.

Why in America is it now considered a threat to our government to study our founding documents and to advocate for limited government and responsible spending? Why is giving out copies of the constitution and discussing pending legislation or even comparing legislative score cards a threat to the current Administration and members of Congress? Are certain members of Congress threatened by this type of civic engagement?

The IRS’s targeting of the Wetumpka TEA Party is disturbing and the activist partisan aggression coming from the IRS deeply unnerved me. The IRS, EPA, or any other government agency should never be used as a weapon against an Administration’s political enemies. For the first time in my memory of American history – the federal government targeted, harassed, and sought to stifle millions of citizens solely because of their point of view. And it wasn’t subtle.

The governments of third world nations intimidate and harass dissenting citizens. It does NOT happen in the land of the free... and it will not be tolerated.

It’s shocking. It’s repugnant. It’s infuriating. And – most troubling of all – those responsible have not stopped it! Some of the targeted groups are still waiting for approval. The IRS tried to intimidate us with their intrusive and illegal questionnaires but we hired the American Center for Law and Justice. They now represent us in court against the IRS and this Administration. With such a line drawn in the sand, you would think that the IRS would retreat. They have not done so however, with their newly proposed regulations.

Activity that has always been allowed for 501c4's and that is vital to the social welfare of our communities will now be considered "Campaign Related Political Activity" and will jeopardize the tax-exempt status of thousands of groups. **Let me give you some examples of the proposed rule changes:**

- We're not allowed to use words like "oppose," "vote," "support," "defeat," and "reject."
- We are not allowed to mention, on our website, or in any communication that would reach 500 people or more, the name of a candidate for office, 30 days before a primary election and 60 days before a general election.
- We're not allowed to mention the name of a political party if they have a candidate running for office 60 days before a general election,
- No more voter registration drives or conducting a non-partisan "get-out-the-vote" drives.
- No creating or distributing voter guides outlining how incumbents voted on particular bills.
- We can't host candidates for office at any event, including debates or forums up for 2 months before the general election,
- Our officers and leaders cannot speak publicly about incumbents, legislation, and/or voting records without it jeopardizing our tax status.

These proposed changes are not going to impact all Americans equally. The IRS has made sure that the labor unions and trade associations are wholly exempt from these new rules. Does this sound like the land of the free or the home of the brave to you? Where does the buck stop?

Whatever your political affiliation, most Americans can agree – and history will attest – that unaddressed abuses of power lead to greater abuses of power.

The political targeting carried out by the IRS is a fundamental transformation of *the* America that we all grew up in. I am a Born Free American Woman, and we are Born Free Americans, and our liberties are at dire risk, and all of it has happened on this Administration's watch and during their control. Our government is using its agencies as weapons against its own citizens and we demand that Congress and the Courts fulfill their duty to stop these abuses immediately and to bring to justice not only those who gave the orders but all those who helped carry them out.

Thank you, I will take any questions you might have.

Mr. JORDAN. Mr. Sekulow.

STATEMENT OF JAY SEKULOW

Mr. SEKULOW. Chairman Jordan, Ranking Member Cartwright, and distinguished members of the subcommittee, on behalf of the American Center for Law and Justice, thank you for allowing me to participate in today's hearing. I represent 41 organizations that have filed a Federal lawsuit against the Internal Revenue Service. My first job out of law school, a long time ago, was with the Office of Chief Counsel of the IRS. I was a trial lawyer for Chief Counsel's Office. I'm proud of that heritage in my legal career. I am disappointed and dismayed with what the IRS is doing even today.

I have prepared comments. I would like those to be made part of the record. Thank you, Mr. Chairman.

[Prepared statement of Mr. Sekulow follows:]



PREPARED WRITTEN TESTIMONY OF

Jay Alan Sekulow, J.D., PhD

Chief Counsel, American Center for Law and Justice

Subcommittee on Economic Growth, Job Creation & Regulatory Affairs

Committee on Oversight and Government Reform

February 6, 2014

“The IRS Assault on Dissenting Speech”

Chairman Jordan, Ranking Member Cartwright, and distinguished Members of the Subcommittee, on behalf of the American Center for Law & Justice, thank you for allowing me to address the IRS’s recent and ongoing assault on the free speech rights of conservative nonprofits. With the ACLJ currently engaged in litigation against the IRS and key officials from the IRS on behalf of 41 conservative groups from 22 states, we are keenly aware of the importance of this hearing.

On May 10, 2013, the IRS – through Lois Lerner, its former director of exempt organizations – apologized for a systematic practice whereby the IRS selected nonprofit applications from groups bearing specifically conservative names for additional scrutiny. Her words were clear: “They used names like Tea Party or Patriots and they selected cases simply because the applications had those names in the title. That was wrong, that was absolutely incorrect,

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insensitive, and inappropriate.”¹ This additional scrutiny not only delayed the processing of their applications for a period of years but also resulted in intrusive questions from the IRS that were far beyond the scope of legitimate inquiry.²

At the American Center for Law and Justice, we were not surprised by Ms. Lerner’s apology. Indeed, we had long been aware of the IRS’s targeting scheme. Beginning in early 2012, a number of conservative organizations contacted us, all reporting the same thing: Long delays in processing nonprofit applications followed by a series of questions breathtaking in their level of intrusion.³

By the end of 2012 the ACLJ ultimately represented more than two dozen conservative groups, all of which faced profound delays in their nonprofit applications and intrusive follow-up questioning.⁴ Arguably, no group outside the IRS itself had greater experience with the IRS targeting scheme. Thus, we were uniquely positioned to evaluate the IRS’s apology and its resulting justifications for its misconduct.

Simply put, the IRS deceived the public about the extent of its wrongdoing and maintains that deception to this day.

¹ Rick Hasen, *Transcript of Lois Lerner’s Remarks at Tax Meeting Sparking IRS Controversy*, ELECTION LAW BLOG (May 11, 2013, 7:37 AM), <http://electionlawblog.org/?p=50160>.

² Stephen Ohlemacher, *IRS Apologizes for Targeting Tea Party Groups*, THE ASSOCIATED PRESS (May 10, 2013, 6:14 PM), <http://bigstory.ap.org/article/irs-apologizes-targeting-conservative-groups>.

³ David French, *A Broad-Based Assault on the Tea Party?*, NAT’L REV. ONLINE (Mar. 2, 2012, 3:29 PM), <http://www.nationalreview.com/corner/292475/broad-based-irs-assault-tea-party-david-french>.

⁴ *Tea Party Victory Report: Victory After Victory this Year – Nationwide*, AM. CTR. FOR LAW & JUSTICE (Dec. 17, 2012, 11:25 AM), <http://aclj.org/free-speech-2/tea-party-victory-report-victory-nationwide>.

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The initial IRS defense turned on three fundamental misstatements: First, that the misconduct was localized to low-level employees in one IRS office, in Cincinnati.⁵ Second, that the misconduct was unrelated to the political point of view of the targeted groups but was merely a misguided effort to respond to a “big increase” of 501c4 applications.⁶ And third, the misconduct had been identified and stopped. These assertions were all false.⁷

The misconduct was not localized in Cincinnati. From the moment that Lois Lerner made her apology, at the ACLJ we had in our possession letters from IRS offices in California and from IRS headquarters in Washington, D.C.⁸ In addition, we possessed letters signed not just by “low-level” employees but by high-ranking IRS attorneys and officials from Washington, including letters signed by Lois Lerner.⁹

Additionally, we were able to quickly determine that there was no “big increase” of applications at the time the targeting began. In fact, there were fewer 501c3 and 501c4 applications in fiscal year 2010 – when the targeting began – than in fiscal year 2009.¹⁰

⁵ Stephen Ohlemacher, *IRS Apologizes for Targeting Tea Party Groups*, THE ASSOCIATED PRESS (May 10, 2013, 6:14 PM), <http://bigstory.ap.org/article/irs-apologizes-targeting-conservative-groups>.

⁶ Rick Hasen, *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, ELECTION LAW BLOG (May 11, 2013, 7:37 AM), <http://electionlawblog.org/?p=50160>.

⁷ *White House Claims False: IRS Targeting Ongoing*, AM. CTR. FOR LAW & JUSTICE, (May 22, 2013, 9:23 AM), <http://aclj.org/free-speech-2/white-house-claims-false-irs-targeting-ongoing>.

⁸ Matthew Clark, *More IRS Offices than Single Cincinnati Office Sent Inquiry Demands To Targeted Tea Party Groups*, AM. CTR. FOR LAW & JUSTICE (May 13, 2013, 5:48 PM), <http://aclj.org/free-speech-2/multiple-irs-offices-cincinnati-sent-inquiry-demands-targeted-tea-party-groups>.

⁹ Andrew Stiles, *Lois Lerner Directly Involved in IRS Targeting, Letters Show*, NAT'L REV. ONLINE (May 23, 2013, 6:49 PM), <http://www.nationalreview.com/corner/349212/%5Btitle-raw%5D>.

¹⁰ TREAS. INSPECTOR GEN. FOR TAX ADMIN., 2013-10-053, INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW 9 (May 14, 2013) available at <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.html>.

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We also knew that IRS misconduct had not stopped but was instead ongoing. In fact, one of our clients received additional intrusive questions just weeks before Lois Lerner's apology, and several of our clients were still waiting – years after submitting applications – for IRS approval.¹¹ Some still wait to this day.

If the IRS targeting scandal was not the result of a few overwhelmed low-level workers whose misconduct was stamped out as soon as it was discovered, then what truly happened?

While it is difficult to answer this question definitively, since the IRS has failed to hand over all requested documents to Congressional investigators¹², and key IRS officials have been less-than-forthcoming (including asserting the Fifth Amendment privilege against self-incrimination) in response to questions from relevant Congressional Committees¹³, the broad contours of the scandal are growing more apparent.

The genesis of IRS targeting lies not with overwhelmed workers facing a flood of unexpected applications but instead with alarmed politicians confronting the unexpected emergence of a new political movement.

The rise of the Tea Party coincided with (though was independent of) the Supreme Court's

¹¹ *White House Claims False: IRS Targeting Ongoing*, AM. CTR. FOR LAW & JUSTICE, (May 22, 2013, 9:23 AM), <http://aclj.org/free-speech-2/white-house-claims-false-irs-targeting-ongoing>.

¹² Stephen Ohlemacher, *Rep. Issa Accuses IRS of Obstructing Investigation*, YAHOO! NEWS, (Aug. 2, 2013, 3:24 PM), <http://news.yahoo.com/rep-issa-accuses-irs-obstructing-investigation-171420153.html>.

¹³ Caitlin Dickson, *As Lois Lerner Pleads the Fifth, the IRS's Problems Aren't Just Political*, THE DAILY BEAST, (May 23, 2013), <http://www.thedailybeast.com/articles/2013/05/23/as-lois-lerner-pleads-the-fifth-the-irs-s-problems-aren-t-just-political.html>.

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decision in *Citizens United versus the Federal Election Commission*, a decision that affirmed the First Amendment rights of citizens speaking through corporations and thereby broadened free speech opportunities for political dissenters.¹⁴ Stripped of the ability to explicitly limit corporate free speech, the Obama Administration launched a public-relations offensive against conservative groups.

On August 21, 2010, the President warned of “attack ads run by shadowy-groups with harmless-sounding names.” The President also said, “We don’t know who’s behind these ads and we don’t know who’s paying for them . . . you don’t know if it’s a foreign-controlled corporation . . . The only people who don’t want to disclose the truth are people with something to hide.”¹⁵

On October 14, 2010, President Obama called organizations with “benign-sounding” names “a problem for democracy,” and the next week he complained about individuals who “hide behind those front groups,” called such groups a “threat to our democracy,” and claimed that such groups were engaged in “unsupervised” spending.¹⁶

President Obama was hardly the only political leader to speak out against the free speech rights of conservative nonprofits. On February 16, 2012, Democrat Senators Bennett, Franken,

¹⁴ *Citizens United v. FEC*, 558 U.S. 310 (2010).

¹⁵ *Remarks of President Barack Obama: Weekly Address (Aug. 21, 2010)*, WHITEHOUSE.GOV, <http://www.whitehouse.gov/the-press-office/2010/08/21/weekly-address-president-obama-challenges-politicians-benefiting-citizen>; see also *Remarks by the President on the DISCLOSE Act*, WHITEHOUSE.GOV, (Jul. 26, 2010, 2:49 PM), <http://www.whitehouse.gov/the-press-office/remarks-president-disclose-act> (“ . . . [A] group can hide behind a name like ‘Citizens for a Better Future,’ even if a more accurate name would be ‘Companies for Weaker Oversight.’ These shadow groups are already forming and building war chests of tens of millions of dollars to influence the fall elections”).

¹⁶ *An IRS Political Timeline*, WALL ST. J. (Jun. 6, 2013, 7:40 PM), <http://online.wsj.com/news/articles/SB10001424127887323844804578529571309012846>.

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Merkley, Schumer, Shaheen, Udall and Whitehouse, sent a letter to the IRS demanding that the IRS investigate tax-exempt organizations for engaging in “political activities.”¹⁷ This demand came just as the IRS was issuing yet another round of intrusive questions to conservative groups.

Given this explicit political pressure, the nature of the questions the IRS later presented to conservative groups is hardly surprising and indeed appears calculated to answer each of the questions the President himself raised.

The IRS asked for the identity of donors, for passwords for websites, the political activity even of family members, and asked broad questions designed to expose every aspect of the groups’ First Amendment-protected activity. For example:

Do you directly or indirectly communicate with members of legislative bodies? If so, provide copies of the written communications and contents of other forms of communications.

Do you have a close relationship with any candidate for public office or political party? If so, fully describe the nature of that relationship.

Please describe the associate group members and their role with your organization in further detail. (a) How does your organization solicit members? (b) What are the questions asked of potential members? (c) What are the selection criteria for approval? (d) Do you limit

¹⁷ Letter from Charles E. Schumer et al., U.S. Sen., to Douglas H. Shulman, IRS Comm’r (Mar. 12, 2012) (on file with author), available at <http://www.schumer.senate.gov/record.cfm?id=336270>.

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membership to other organizations exempt under 501c4 of the Code? (e) Provide the name, employer identification number, and address of the organizations.

Speaking of an educational pro-life organization, the IRS attacked its free speech by stating:

(1) The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications; (2) The facts that purport to support the viewpoints or positions are distorted; (3) The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations; and (4) The approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

These requests and comments are far more intrusive than the information requests strongly condemned by the Supreme Court in *NAACP v. Alabama*, which declared: "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."¹⁸

It is difficult to overstate the extent and magnitude of federal government misconduct so far uncovered. The list of senior IRS officials directly involved in the targeting scheme itself seems

¹⁸ See 357 U.S. 449 (1958) (holding the NAACP's right to freely associate and due process rights were implicated when the state scrutinized their membership lists).

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to grow each day. Indeed, at the ACLJ we've filed suit on behalf of 41 clients from 22 states, naming – and providing specific allegations against -- no less than twelve IRS officials, including the IRS's Commissioner and Chief Counsel. We will provide a copy of this Complaint and attached exhibits to the Committee.

As for the magnitude of the scandal, on June 20, 2013, Stan Veuger, writing for the American Enterprise Institute, cited a study showing the impact of the Tea Party's "ground game" on the 2010 election and noting that suppressing the Tea Party could well have provided President Obama his margin of victory in 2012.¹⁹

In other words, not only was the targeting scheme repugnant to the Constitution, it could well have had decisive real-world effects in a presidential election.

Given this reality, it's hardly surprising that the Administration is proving utterly incapable of policing itself. According to published reports, it has delayed turning over tens of thousands of relevant documents to Congressional investigators²⁰, it is currently in the process of attempting to dismiss litigation filed against it by groups it admitted it harmed, and its criminal investigation – announced with much fanfare in May, 2013 – is led by a large donor to President Obama's two presidential campaigns, a person so close to the President that she was invited to the White

¹⁹ Stan Veuger, *Yes, IRS Harassment Blunted the Tea Party Ground Game*, AM. ENTER. INST. (Jun. 20, 2013), <http://www.aei.org/article/economics/yes-irs-harassment-blunted-the-tea-party-ground-game>.

²⁰ Stephen Dinan, *Issa: FBI Impeding Inquiry into IRS Targeting of Conservative Groups*, WASH. TIMES, Dec. 2, 2013, <http://www.washingtontimes.com/news/2013/dec/2/lawmakers-suspect-fbi-is-impeding-irs-inquiry-targ/?page=all>.

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House to attend a bill-signing ceremony.²¹

Millions of Americans with good reason perceive the IRS as inherently partisan, doubt the Obama Administration's good faith in faithfully executing the laws of the United States by defending the First Amendment rights of all American citizens, and are understandably cynical when an avowed partisan accepts the assignment to investigate perhaps our nation's most politically-significant scandal.

Under such circumstances, Congressional oversight is absolutely essential. The work of this – and other – committees must continue unimpeded and my colleagues and I at the ACLJ stand ready to assist in any way that we can.

²¹ *Obama Backer Leading IRS Probe Visited White House in '09, Records Show*, FOXNEWS.COM (Jan. 13, 2014), <http://www.foxnews.com/politics/2014/01/13/obama-backer-leading-irs-probe-visited-white-house-in-0-records-show/>.

Mr. SEKULOW. I'm going to deviate from those for a moment because of a recent revelation. But before I do that, Mr. Cartwright, I would like to give you some information about the progressive versus conservative groups that were targeted, and indeed there were some progressive groups that were put in this list. However, this is the IRS' own statistics through July 29th of last year.

One hundred and four conservative organizations, according to the IRS, were targeted. They were asked 1,552 questions. The average question per group was 15. That did not include the subparts. Forty-eight were approved, which is an overall approval rating of only 46 percent. Indeed, seven progressive groups somehow got caught up in this dragnet because of their names. They were asked a total of 33 questions, or 4.7 questions per organization. Seven of them were approved. That's 100 percent.

This wasn't an equal opportunity discrimination. This was targeted discrimination coming from the Internal Revenue Service. And what I would like to address now is that our view is that that determination came from the highest ranks of the Internal Revenue Service.

Just yesterday it was brought to the public's attention that an email had been sent by Lois Lerner, the former head of Tax Exempt. She pled the Fifth Amendment. Based on the evidence that came out yesterday, if I was her lawyer I would have told her to plead the Fifth Amendment also, and here is why.

An email from Lois Lerner was sent, with Ruth Madrigal from the Office of Tax Policy, United States Department of the Treasury, it went to Janine Cook, deputy division counsel and associate chief counsel of the IRS Tax Exempt and Government Entities Division. It went to Victoria Judson, division counsel, associate chief counsel, Tax Exempt and Government Entities Division. It went to Nancy J. Marks, division counsel and associate chief counsel for Tax Exempt and Government Entities, and a senior advisor who conducted a probe—for Steven Miller, by the way—with Holly Paz into the impropriety months before this email.

What was this email? It was an email that, we will work, "off plan to devise rules to curtail the activities of 501(c)(4) organizations." Off plan. That's very different from saying two rogue agents in Cincinnati. So if I was Lois Lerner's attorney, I would have told her to plead the Fifth Amendment, too, because there is serious liability.

With regard to the facts of this case, we have 41 clients. Late in December I was contacted by the United States Department of Justice, the FBI, and Ms. Bosserman was on the call as well. They had requested at that point that they might want to after the first of the year interview 3 of our 41 clients. They said they would get back with us after the first of the year. They did. And about the same day they got back with us, of course the announcement about Ms. Bosserman's political contributions was made public, and that was followed up by a statement to The Wall Street Journal by an FBI source that there was indeed no criminal investigation.

My office's comment back—and by the way, the lawyer in my office that is tasked with dealing with the FBI on this is a former assistant United States attorney—if there is no criminal investiga-

tion, why do you need to speak to our clients? No comment. They said they will not discuss the ongoing investigation.

The next question, which I think is a very serious one, is the fact that the FBI in desiring to speak with our client, we raised the concern of Barbara Bosserman. And, Mr. Cartwright, again, with due respect, it is not because of her capabilities as a lawyer. I'm sure she's a fine lawyer. She's a career lawyer. You cited an ethics rule. And then Chairman Jordan, you cited the real rule. The obligation is not on the Department of Justice for something like this. It is on the lawyer.

Mr. JORDAN. Sure, sure. Exactly.

Mr. SEKULOW. The lawyer has to avoid the appearance of impropriety. And if you are heading up the investigation—and we are assuming she is, no one has ever been very clear on that—you can't head up the investigation in an impartial method if the public thinks there is an even potential for bias or an inappropriate position.

It was very simple for the Department of Justice to solve this. They didn't have to go in and ask for her political position. She has the affirmative obligation to tell her supervisor, I could be compromised in this, it would be best if someone maybe from Public Corruption took a look at it. I'm just saying that for the record so that we are clear on the evidence.

But what we have right now, in the few moment I have got left, Mr. Chairman, is——

Mr. JORDAN. She could have said that and the Department says, no, we want you to head the investigation. That is my hunch.

Mr. SEKULOW. That's why I'm saying that I don't want to impugn her integrity. I don't think it's fair to do that because I don't know what statements she made.

Mr. JORDAN. I agree. I agree.

Mr. SEKULOW. But she did have the obligation.

But let me say this: The IRS attempt now to change the rules falls on two systematic problems. Number one, you don't get to change the rules for a post hoc justification of your prior bad and illegal conduct, number one. And number two, remember that the Acting Commissioner, when this first broke, proposed a scenario where he would do a 40 percent self-certification to grant exemptions to these (c)(4) organizations if they would self-certify that no more than 40 percent of their activity was deemed political.

Now, my clients did not exercise that. But if some client of some lawyer did exercise that, because there were over 300 of these groups that were targeted, if they did exercise that how would you like to be the lawyer that told their client to exercise the 40 percent rule and then 9 weeks later, the IRS say, and by the way, 40 percent, we have just changed the definition of political activity. You don't get to change the rules in the middle of the game to justify your bad behavior.

Thank you, Mr. Chairman.

Mr. JORDAN. Thank you, Mr. Sekulow, we appreciate that.

Recognize the vice chair of the committee, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman. Thanks to the witnesses.

You know, this targeting issue is obviously very concerning, but understanding the government being what it is, understanding human nature, people are apt to abuse their power. What is even more concerning for me is that once you have an admission of that, once you have somebody taking the Fifth Amendment, there is zero interest in rectifying any of this. And what the IRS has done, what the FBI has done, the Justice Department, I mean, I agree with the witnesses, this is just a total sham and the American people are not getting answers.

Ms. Engelbrecht, you mention in your statement, but I just think it should bear repeating, you had 20 years in business, zero issues with any agencies. You file for King Street and for True The Vote for status, and you are visited by how many different agencies? Which ones? FBI?

Ms. ENGELBRECHT. The FBI, the IRS.

Mr. DESANTIS. IRS.

Ms. ENGELBRECHT. Bureau of Alcohol, Tobacco and Firearms.

Mr. DESANTIS. ATF.

Ms. ENGELBRECHT. OSHA.

Mr. DESANTIS. OSHA.

Ms. ENGELBRECHT. And Texas' sort of branch of the EPA.

Mr. DESANTIS. Now, and you have mentioned, I think very eloquently, that you are going to keep fighting, and I see that, obviously. But when you have to deal with this, I mean, you have a business, you have other things, you are trying to impact the country in a positive direction, when you have to deal with these agencies like this, it makes you less effective in pursuing your message. It has to. Am I right in saying that?

Ms. ENGELBRECHT. It certainly gives one pause to think that there is interagency collusion against private citizens. It is the weaponization of government.

Mr. DESANTIS. And do you think that people similarly situated to you may look at what happens to people who speak out, and they may just decide, look, I don't want to deal with that. And so I'm going to just remain silent because I don't want to buy myself problems. In other words, this type of targeting can chill political speech. Do you think that is true?

Ms. ENGELBRECHT. That's absolutely the case.

Mr. DESANTIS. Ms. Gerritson, what was the IRS asking you to provide? It seems like these were very invasive and intrusive questions.

Ms. GERRITSON. They sent me a list of approximately 80 questions. It was an eight-page document. Some of the questions they asked they wanted to know all of my members' names. They wanted to know volunteers' names.

Mr. DESANTIS. Which by the way, I mean, we already know Lois Lerner has disclosed tax information, that she got caught red-handed in an email, so this stuff is supposed to be confidential, but we know that a lot of times it is not kept confidential. So continue.

Ms. GERRITSON. They wanted to have copies of every speech that was ever given. They wanted credentials of who those speakers were. They wanted to know if any of our members or volunteers were going to run for office, and if so, what office. Remember, this was the 2012 election cycle when we got this questionnaire. They

wanted to know any communications that I have had with any legislative body, even within my own representative. They wanted emails, phone contact. They wanted to know what I was saying to my legislator.

Mr. DESANTIS. So I will ask a similar question for you. Just seeing that, a lot of people getting involved in politics for the first time, you are seeing all these questions, do you think that some people just look at that, and say, I don't want to have to deal with this? In other words, does this cause some people to silence themselves.

Ms. GERRITSON. Absolutely. We have a group in Alabama who said they got their letter and said, we are not going to do this, and they stopped.

Mr. DESANTIS. Ms. Mitchell, do you agree with Mr. Sekulow, this idea that, oh, well, they were targeting everybody, liberal groups as well, you know, that is false in your judgment, correct?

Ms. MITCHELL. It is absolutely false. The records don't substantiate that, and I know that that is one of the things that people have been using since last summer as a means of trying to discredit or to thwart the investigation. I will give you one example. There was a report that was published in USA Today last September which was an internal IRS document that listed 162 organizations that were on the watch list or development list at the IRS. And I think the number that was calculated was 83 percent of them were conservative. I'll give you the example. This was a document prepared in November 2011. King Street Patriots is listed on there and it says on the report likely approval. November of 2011, likely approval.

Also on that list is one of the few liberal groups, Progress Texas, and references in the comments that this is an organization that appears to engage in anti-Rick Perry propaganda. November 2011. Fast forward. Progress Texas gets its tax-exempt status by May of 2012. King Street Patriots did not get its tax-exempt status until 2 months ago after going through yet more rounds of questioning.

Mr. DESANTIS. Thank you. I'm about out of time. I just want to ask Mr. Sekulow, what the administration is trying to do with the (c)(4), is it safe to say that if that is in effect that that would disproportionately affect conservative groups? In other words, a lot of the labor unions and environmental groups would not be affected by that, is that correct?

Mr. SEKULOW. Correct, because a lot of those are exempt under different provisions of the Internal Revenue Code. But in that regard and with regard to the questioning aspect of this and the chilling effect, which I think, Congressman, is what you are going after, we have a client, a pro-life organization that is one of the ones targeted. The questions to them were so draconian in nature that this is what they asked. Talking about the client's pro-life position, this is the IRS, "The presentation of viewpoints or positions are unsupported by facts as a significant portion of the organization's communications. The facts that purport to support the viewpoint or positions are distorted." This is coming from an Internal Revenue Service agent.

"The organization's presentation makes substantial use of inflammatory and disparaging terms and express conclusions more

on the basis of strong emotional feelings than of objective evaluations. And the approach used in the organization's presentation is not aimed at developing an understanding on the part of the intended audience or the readership because it does not consider their background or training in the subject matter."

Who gave the IRS the authority to say this? And how is it that the President of the United States can say there is not a smidgeon of corruption when the documents—by the way, some of these signed by Lois Lerner or Holly Paz—how could they possibly even say this?

The thing I don't understand, Mr. Chairman, is as the President was making his statements, as members of this committee were making statements, we had the documents in our possession, and I know Cleta did as well, from offices all over the country, coast to coast. And the agents told our clients it was being managed out of Washington. And with the email that was released yesterday, we know how high up the chain. And I would urge the committee, when you start talking about associate chief counsels, divisional counsels, this is as high as it gets.

Mr. JORDAN. Well said.

The gentleman from Pennsylvania is recognized.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

As I said at the outset of this hearing, I am deeply troubled regarding IRS employees' improper handling of applications for tax-exempt status. However, I am encouraged that senior leadership of the agency during this period has been removed. In December the Senate confirmed a new Commissioner of the IRS, and he has pledged his commitment to cooperating with Congress and reforming the agency. I do look forward to working with him.

While I welcome the opportunity to hear the concerns of these witnesses that participate in this hearing, I do fear that the committee is once again presenting only one side of the story. The committee's 10-month-long investigation has uncovered no evidence to support claims that the IRS was targeting any groups for political reasons. Not one single witness has appeared before this committee and told us that the White House was involved in directing the conduct of the IRS employees.

The deputy inspector general for investigations identified absolutely no evidence of political motivation after a review of more than 5,000 emails of IRS employees, and that was Russell George. And he was the one whose report really sparked this committee's hearings. And I personally asked him that question: Did you find evidence of political motivation for what was going on? And he said no.

Instead, as we learned in a transcribed interview last year, it was the self-described conservative Republican manager in Cincinnati who oversaw IRS employees who developed the inappropriate criteria for examination.

And, Mr. Sekulow, you were helpful with some statistics this morning, and I wanted to ask you about that. You mentioned 104 conservative groups targeted. Was that the number?

Mr. SEKULOW. This is from the report of the IRS dated through July 29th of 2013, 104 conservative organizations on that report were targeted.

Mr. CARTWRIGHT. Thank you. And then seven progressive targeted groups.

Mr. SEKULOW. Seven progressive organization groups, all of which received their tax exemption.

Mr. CARTWRIGHT. Does it give the total number of applications? In other words, 104 conservative groups targeted. How many applied? How many conservative groups applied?

Mr. SEKULOW. In the TIGTA report I think the number was 283 that they had become part of the target. But actually, applications, a lot of the IRS' justification for this, at least purportedly, was an increase in applications, and there was actually a decrease in the number.

Mr. CARTWRIGHT. Right. And does it give the number of progressive groups that applied for tax-exempt status?

Mr. SEKULOW. No, the only report that has the progressive—

Mr. CARTWRIGHT. No? No?

Mr. SEKULOW. The report I have in front of me is the one which just has the seven.

Mr. CARTWRIGHT. All right, thank you.

Mr. SEKULOW. None of those have been denied, though.

Mr. CARTWRIGHT. Now, in addition, the committee's investigation in this matter revealed that the IRS also sought out liberal groups with these words, progressive or occupy, in the names. At an Oversight Committee hearing last year, Russell George admitted he actually failed to inform our committee that he was aware of progressive groups receiving similar treatment as conservative groups.

And now, Ms. Mitchell, you have favored us with your testimony this morning, and thanks again for coming. We just found out about you Monday afternoon, so we didn't have too much time to read about you. But I saw your extensive CV, which is online, and has you as a partner at the Foley Lardner law firm here in Washington, is that right?

Ms. MITCHELL. Correct.

Mr. CARTWRIGHT. All right. And it says that you are a member of the firm's political law practice. Is that correct?

Ms. MITCHELL. Correct.

Mr. CARTWRIGHT. Okay. The firm has a taxation practice that's different from the political law practice?

Ms. MITCHELL. Correct.

Mr. CARTWRIGHT. Okay. But you are in the political law practice. If I'm not mistaken, you have personally served as legal counsel to the National Republican Senatorial Committee. Am I correct on that?

Ms. MITCHELL. Among others, yes.

Mr. CARTWRIGHT. You have personally served as legal counsel to the National Republican Congressional Committee as well. Am I correct in that?

Ms. MITCHELL. Correct.

Mr. CARTWRIGHT. You served as a legislator in Oklahoma. Am I correct?

Ms. MITCHELL. Correct.

Mr. CARTWRIGHT. Would that be as a Republican legislator?

Ms. MITCHELL. No, actually, I was a Democrat then.

Mr. CARTWRIGHT. Were you?

Ms. MITCHELL. Until I realized that that had become the party of the government and not the people.

Mr. CARTWRIGHT. Okay.

Mr. CONNOLLY. Mr. Cartwright, just for the record, not all of us would agree with that. We are entitled to our political views, too.

Mr. CARTWRIGHT. Thank you, Mr. Connolly.

I guess the question I have for you is, in your law practice, your political law practice, how many progressive groups do you represent right now?

Ms. MITCHELL. None, because it doesn't work that way.

Mr. CARTWRIGHT. How many liberal groups do you represent right now?

Ms. MITCHELL. It doesn't work that way. It doesn't work that way. It doesn't work that way, Congressman.

Mr. CARTWRIGHT. Well, you testified that you represent Tea Party groups.

Ms. MITCHELL. I do.

Mr. CARTWRIGHT. All right. So it works that way.

Ms. MITCHELL. That's right. And as I say to people, in this law practice practice you can't play for USC and Notre Dame, you have to pick a team.

Mr. CARTWRIGHT. How many occupy groups do you represent?

Ms. MITCHELL. Lord, I wouldn't represent one of them on a bet.

Mr. CARTWRIGHT. All right. I think you have answered my question.

Mr. SEKULOW. I have represented the ACLU, however, Mr. Cartwright.

Mr. CARTWRIGHT. Now, in light of continuing revelations that the majority on this committee has excluded Democratic members and staff from in-person meetings with the inspector general's staff, serious concerns persist about the impartiality of the work of the majority on this committee. Sadly, only Tea Party groups are represented before this panel today, and one of them has already testified before Congress. Since the identities of these witnesses has only been revealed on Monday afternoon, our staff was unable to identify a minority witness on such short notice, and as a result this is not a balanced hearing.

Now, this committee is charged with conducting oversight of the Federal Government. And as Members of Congress, we must exercise that authority in a responsible manner. Calling this kind of one-sided hearing and making false legal allegations, attacking the credibility of career Federal employees falls well short of that standard. Going forward, I want to see us working together to conduct responsible oversight of the Internal Revenue Service.

With that, I yield back, Mr. Chairman.

Mr. JORDAN. I would just point out that—well, first of all, you know, Ms. Mitchell doesn't represent progressive groups, because it sounds like, according to Mr. Sekulow, they don't need it. They were seven for seven.

Mr. SEKULOW. Now, I'd urge you to have some come over here and testify and find out what they were asked.

Mr. JORDAN. The minority had—the minority had 9 days' notice of this hearing. They could have got a witness here. Maybe you want to go get one of those seven who got approved out of the

seven who were put on some notice. But what the committee did—what the minority did have time to do was to write me a letter urging me not to pursue having Barbara Bosserman come here and answer our questions. You had time for that, but you didn't have time to find someone to come testify?

I recognize the gentleman from South Carolina.

Mr. GOWDY. Thank you, Mr. Chairman.

I'm a lot more interested in having a balanced investigation than I am a balanced hearing, and in that light, Ms. Engelbrecht, did you hear the President say there was not a smidgen of corruption?

Ms. ENGELBRECHT. I've heard that he said that, yes, sir.

Mr. GOWDY. Ms. Gerritson, did you hear the President say there was not a smidgen of corruption? And let me just translate that, because "smidgen" is not a legal term. I assume he meant scintilla, and I assume he meant criminality instead of corruption.

How was he able to make that conclusion? Neither of you have been interviewed by the Bureau, have you?

Ms. ENGELBRECHT. No, sir.

Ms. GERRITSON. No.

Mr. GOWDY. And according to Mr. Sekulow, of his 41 clients, 3 have been interviewed, or 3 were asked to be interviewed.

Mr. SEKULOW. Right. Not interviewed yet.

Mr. GOWDY. Okay. Zero of 41 have actually been interviewed.

Mr. SEKULOW. Correct.

Mr. GOWDY. All right. So the President says there's not a smidgen of criminality or corruption. Do either of you remember seeing a witness named Lois Lerner sitting at the very table you-all are sitting at? Do you remember her invoking her Fifth Amendment privilege, the same privilege that she targeted some of your groups for trying to educate people about. Some of your just groups just want to simply educate people about the Constitution, the one that she availed herself of the very second she was exposed to criminal investigation.

So how can the President say there's not a smidgen of criminality, when Lois Lerner invoked the Fifth Amendment, 41 witnesses haven't been interviewed, including the 2 that are here right now? How can he possibly draw that conclusion?

Ms. GERRITSON. Good question.

Mr. GOWDY. I wish someone—I wish one of my colleagues on the other side of the aisle would ask the President how in the world he concluded no criminality when Lois Lerner sat in front of them and invoked her privilege against criminality? How do you square that?

Mr. SEKULOW. Mr. Gowdy, if I may. She invoked her Fifth Amendment privilege, which she has the right to do, of course. You and I both respect that because we now know the reason why. It wasn't perhaps as clear as it was made yesterday. She invoked her Fifth Amendment privilege because she knew—after she made a false statement in a planted question at an ABA meeting, she knew that, in fact, there was, her words and her emails, off-plan drafting of rules targeting conservative groups.

She also said at a Duke law forum that people are asking us what we can do, and she said, I can't do anything until I see the 990s, the tax returns that are filed. That was all going on while

she was redrafting the rules with the highest level of the Chief Counsel's Office.

Mr. Cartwright, I—

Mr. GOWDY. Mr. Sekulow, I just—I want to say this. I understand why she invoked her Fifth Amendment privilege. I don't understand why in the hell the President of the United States would prejudge an investigation—

Mr. SEKULOW. I don't either.

Mr. GOWDY. —before any of your clients were interviewed, before either of these two victims—and I know you don't like that word, but I'm using it in a criminal sense of the word—before either of these two victims were interviewed. He has gone on national television, he has prejudged the investigation and, in my judgment, has compromised the Department of Justice, which leads me to this question, Mr. Sekulow.

Mr. SEKULOW. Yes, sir.

Mr. GOWDY. There is the option, when you have a compromised investigation and a chief executive who has prejudged the outcome before the jury's even gotten all the evidence, he's got an option of appointing a special counsel, right?

Mr. SEKULOW. Yes, he does.

Mr. GOWDY. And the special counsel regulation says if it's extraordinary circumstances that furthers the public interest. Can you think of anything more extraordinary than government targeting people based on their political beliefs?

Mr. SEKULOW. No. I agree with you 100 percent, and I also would point to the—again, the email of June 14th, 2012, which was just released, because this shows the need for a special prosecutor at this point on the criminal aspect of this.

And again, Mr. Cartwright, when you asked about the no evidence of politics, let me quote from the email:

"Don't know who in the organization is keeping tabs on (c)(4)s, but since we mentioned potentially addressing them off-plan in 2013, I've got my radar up, and this seemed interesting."

These are coming from the most senior people within the Chief Counsel's Office of the IRS, which is a Presidential appointee. Again, it's an office I came out of, so I have due respect for the office. But at this point, a special prosecutor to evaluate the criminal sanctions or criminal laws applicable would probably be the best way—I believe would be the best way to go because I don't think the Justice Department right now—again, with due respect to the Justice Department—is institutionally capable of doing this.

And I need to say this also, because I thought that the—the question of Mr. Cartwright on Ms. Mitchell's legal representations. She has an exceptionally excellent reputation in this town as a lawyer, and her clients tend to be conservative because that's who her clients tend to be. But, you know, I'm a conservative also, but I—like I said, I've represented the American Civil Liberties Union in cases at the Supreme Court of the United States. I've represented the National Democratic Policy Committee as well. So I don't think this is—it's fair to go after the lawyers in a situation where it is the IRS that is trying to use their procedures to justify their illegal conduct. They—remember the apology? They offered the apology. You know what? The apology is not accepted.

Mr. GOWDY. Mr. Chairman, in conclusion, I believe the ranking subcommittee member said that there are 13 people assigned in this investigation, if I heard correctly. Thirteen people in 6 months have not had time to interview a single solitary one of Mr. Sekulow's clients; 13 people in 6 months have not had time to interview either of these 2 witnesses, and yet the chief executive, the President of the United States, has already prejudged the outcome of this investigation. So either it's ongoing or it's not; either he's wrong or Eric Holder is wrong. In either case, it is time for special counsel, Mr. Chairman.

Mr. JORDAN. Thank you, gentlemen.

I recognize the gentleman from Virginia.

Mr. CONNOLLY. Thank you, Mr. Chairman, and thank you for this intriguing hearing.

I will say at the outset my friend from South Carolina, for whom I have great regard—we don't agree on much, but we have mutual respect—but I will say it ought to trouble a Tea Party panel and a lawyer who represented the ACLU that this committee took upon itself a unique task in voting that a U.S. citizen, irrespective of her views or what you think she did or did not say, to protect herself against self-incrimination, a very sacred principle enshrined in the Constitution of the United States, and it was enshrined in there because of the experience of our Founders with the British, it's a very real right—this committee took upon itself, every Member on that side including my friend from South Carolina, voted unilaterally to decide she dispense with, waive her Fifth Amendment right. And if we can do that to her, we can do it to you.

Every one of us on this side of the aisle voted not to do that because irrespective of what one may decide on the substance of Ms. Lois Lerner's behavior, testimony, whatever, we think American citizens are entitled to constitutional protections, and that the Congress—a committee of Congress does not have the unilateral ability to decide on its own that you waive that right. And listening to the testimony and the concerns here about a government that's overreaching, I would think you might be concerned about this committee overreaching. But it wasn't this side, Ms. Mitchell, that did it. It wasn't this—no, I'm not asking you a question. You made a statement. I'm making a statement.

Ms. Engelbrecht, your written testimony states you believe various run-ins with the government were prompted by your applications for tax-exempt status with the IRS; is that correct?

Ms. ENGELBRECHT. Yes, sir.

Mr. CONNOLLY. One of the Federal agencies you mentioned is OSHA, the Occupational Safety and Health Administration. You complained specifically that in 2012, OSHA inspected your company, Engelbrecht Manufacturing, and—which manufactures fabricated metal products, and you state that OSHA found, "nothing serious or significant, and nonetheless, OSHA issued fines in excess of \$20,000"; is that correct?

Ms. ENGELBRECHT. Yes, sir.

Mr. CONNOLLY. OSHA's inspection report shows that it identified 10 violations at your manufacturing company, all of which are classified as serious. These violations included the failure to provide employees with appropriate eye or face protection when exposed to

eye or face hazards from flying particles, molten metal, liquid chemicals, acids, caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

And, Mr. Chairman, I would ask that the inspection report go into the record at this point.

Mr. JORDAN. Without objection.

Mr. CONNOLLY. Now, is it your contention that those findings were politically motivated because you're seeking a tax-exempt status for another entity; that those violations, in fact, were trivial or nonserious, in your view?

Ms. ENGELBRECHT. When OSHA came to our shop, they came under a false SIC classification. They came when neither my husband nor I were there, and proceeded to interview employees. And I would very much welcome everything that the—that OSHA—

Mr. CONNOLLY. But my question—

Ms. ENGELBRECHT. —gave to us be included, because the cover letter of OSHA clearly states that—

Mr. CONNOLLY. Ms. Engelbrecht.

Ms. ENGELBRECHT. —that they found nothing. No, sir, let me please answer your question.

Mr. CONNOLLY. No, ma'am, I am going to control this questioning, and I'm asking you a simple question. You're going to have a press conference later. You can speak to your heart's content there. I only have 5 minutes.

Were these or were these not, in your view, a serious matter? I thought your testimony said they were not serious.

Ms. ENGELBRECHT. In my opinion and in the cover letter stated opinion of OSHA, they were not serious.

Mr. CONNOLLY. You complained that neither you nor your husband were there. Is it not the case that it's OSHA's practice not to give advance warning? That's the whole point of an inspection to determine whether a facility, in fact, is safe, whether there are violations or not. To tell you we are coming next Thursday is obviously to give you a heads up to clean up whatever you might think is, you know, a violation. Isn't that their normal practice?

Ms. ENGELBRECHT. Sir, I don't know what the normal practice is. We complied as we did with every agency that came over these last 3 years.

Mr. CONNOLLY. Well, if it's your testimony now under oath that you don't know their normal practice, how are you able, nonetheless, to conclude that it's politically motivated and has something to do with your seeking a tax-exempt status, to punish you for that, as opposed to their normal practice looking at a manufacturing facility to make sure it's safe for the workers?

Ms. ENGELBRECHT. Because in the past 3 years, after 20 years of being—nearly 20 years of being in business and no agency coming to visit with us, the succession of agencies that have now come to us for all manner of things begs the question the statistical probability of what happened to me happening without political motivation is staggering.

Mr. CONNOLLY. Well, I would just note for the record, Ms. Engelbrecht and Mr. Sekulow, because we are so concerned about the law here and making sure there are no violations of the law, are you aware of the fact that it's actually illegal for the Depart-

ment of Labor's OSHA to give advance notice when it does inspections? That's actually a matter of law.

Ms. ENGELBRECHT. I was not aware of that, but I'm not contending that they should have given us notice. I'm only—I'm only observing.

Mr. CONNOLLY. But you complained about it. You complained that you didn't get advance notice, and you just said you were concerned that neither your husband—I understand the concern, but you understand that they can't check in advance to see will you be there.

Ms. ENGELBRECHT. Nor did we try to do anything to discourage that process even though we weren't on premises.

Mr. CONNOLLY. And I absolutely take that at face value. But it's a huge leap, then, given that, to conclude that someone is out to get you, Ms. Engelbrecht; that there's any political motivation whatsoever with OSHA following its standard operating procedures.

Mr. SEKULOW. But, Mr. Connolly, you're aware that the information from the IRS is—

Mr. CONNOLLY. Mr. Sekulow—

Mr. SEKULOW. I'm sorry.

Mr. CONNOLLY. Mr. Sekulow, I'm trying to ask the question.

Mr. JORDAN. The gentleman's time is expired.

Mr. CONNOLLY. Thank you.

Mr. JORDAN. Ms. Engelbrecht, in the first 20 years of business, did OSHA ever visit your place of business?

Ms. ENGELBRECHT. No, sir.

Mr. JORDAN. Never once?

Ms. ENGELBRECHT. No, sir.

Mr. JORDAN. After you filed the application, OSHA visited then, right?

Ms. ENGELBRECHT. Yes, sir.

Mr. JORDAN. Okay. And in the first 20 years of business, did the ATF ever come to your business?

Ms. ENGELBRECHT. No, sir.

Mr. JORDAN. Okay. And they came a couple of times once you filed your application?

Ms. ENGELBRECHT. Yes, sir.

Mr. JORDAN. All right. And in your first 20 years of business, did the IRS ever audit you?

Ms. ENGELBRECHT. No, sir.

Mr. JORDAN. But once you filed your application, did they audit you?

Ms. ENGELBRECHT. Many times.

Mr. JORDAN. Okay. And in your first 20 years of business, did the FBI ever visit you?

Ms. ENGELBRECHT. No, sir.

Mr. JORDAN. But once you filed your application, did they visit you?

Ms. ENGELBRECHT. Six times.

Mr. JORDAN. But Mr. Connolly wants us all to believe that's a coincidence.

I would recognize the—

Mr. CONNOLLY. Mr. Chairman, are you saying unilaterally to respond every one of our questions without a response?

Mr. JORDAN. Go ahead.

Mr. CONNOLLY. [Inaudible.]

Mr. JORDAN. I was just pointing out that in 20 years of business, OSHA never came to Ms. Engelbrecht's place of business.

Mr. CONNOLLY. You didn't just—

Mr. JORDAN. Yes, I was, and in 20 years of business, OSHA never visited, FBI never visited—

Mr. CONNOLLY. —invoking my name, Mr. Chairman.

Mr. JORDAN. IRS never audited. Okay. Well, you can respond.

Mr. CONNOLLY. Thank you.

Mr. JORDAN. Even though I gave you plenty of extra time, I'll give you some more.

Mr. CONNOLLY. Thank you.

Mr. JORDAN. The gentleman is recognized for a minute.

Mr. CONNOLLY. So where is the proof, though, other than you're connecting dots that may or may not be connected, that OSHA was politically motivated?

Mr. JORDAN. I didn't say proof; I'm just saying you want us all to believe it's a coincidence.

Mr. CONNOLLY. Well, and you want us all to believe that by innuendo there must be something wrong.

Mr. JORDAN. Fifteen times in a 2-year timeframe, four different Federal agencies visit this lady's place of business, audit her personal and business records, and you expect us to believe that just—

Mr. CONNOLLY. I don't expect you to believe—

Mr. JORDAN. To them, it just happened?

Mr. CONNOLLY. I don't expect you believe anything. You can believe whatever you choose to believe.

Mr. JORDAN. Well, you can believe it's all a coincidence. I refuse to do that.

Mr. CONNOLLY. No, I didn't say that either. I believe in fact-based, empirical oversight, and innuendo and drawing conclusions and paranoia—

Mr. JORDAN. I'd ask the gentleman—

Mr. CONNOLLY. —do not substitute for fact-based, empirical oversight, Mr. Chairman.

Mr. JORDAN. Well, here are the facts.

Mr. CONNOLLY. And the—

Mr. JORDAN. She filed a—an application for (c)(4) status and subsequently was visited by OSHA, FBI, ATF, and was audited by the IRS. That happened.

Mr. HORSFORD. Mr. Chairman—

Mr. CONNOLLY. I would just say, Mr. Chairman—

Mr. HORSFORD. Mr. Chairman—

Mr. CONNOLLY. —you should be in the panel, given your views.

Mr. HORSFORD. Mr. Chairman, will you yield your time for a parliamentary question?

Mr. JORDAN. Yield to the gentleman.

Mr. HORSFORD. Thank you.

Mr. JORDAN. The gentleman is recognized.

Mr. HORSFORD. Can someone answer for me, in the report that was referred to by Mr. Connolly and the OSHA report, the witness reached a negotiated agreement with OSHA and paid fines.

Mr. JORDAN. I'm not sure this is a parliamentary inquiry.

Mr. HORSFORD. It is because it deals with——

Mr. JORDAN. You want to enter something in the record, we'll put it in the record.

Mr. HORSFORD. It's already in the record. My question is, is it true that the witness paid fines substantiating the serious violations that were found out of the OSHA report?

Mr. JORDAN. I think that question has been asked and answered.

Mr. HORSFORD. No, I didn't—I did not hear. That's my parliamentary question. Will the witness answer the question?

Mr. MEADOWS. Mr. Chairman, that's not a parliamentary——

Mr. JORDAN. When you get recognized, which will be shortly, we'll let you ask that question, and if the—I think the witness has answered it, but if she wants to answer it again, and you ask it, I'm sure she'll do that.

I recognize—want to recognize the gentleman from North Carolina Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Ms. Engelbrecht, you started to respond to the gentleman from Virginia by saying “the cover letter,” and he cut you off. Go ahead. You can finish what you wanted to say in that cover letter.

Ms. ENGELBRECHT. Thank you.

Just that the cover letter from OSHA made very clear that they found no serious or concerning findings.

Mr. MEADOWS. Okay. Well, I want to apologize, because what happens in these hearings, quite frankly, is that you come to tell the story of a true American patriot, and then politics can be played. And I'm not making any assertions towards my colleagues opposite, I'm just saying that it becomes very clear that it was extremely coincidental that all these Federal agencies decided to visit your place of business after you took one particular action, and so I find it, the probability of that happening, extremely low.

I do want to follow up. In your opening testimony, though, you made some assertions, and you mentioned the gentleman from Maryland, who is here. And I want to make sure that in that, you know, that we—we don't do anything indirectly that would disparage a Member of this House. You were saying that he targeted you; is that correct?

Ms. ENGELBRECHT. Congressman Cummings, on three separate occasions, sent letters on letterhead from this committee stating that he had concerns and felt it necessary to open an investigation on True the Vote, yes.

Mr. MEADOWS. All right. So, it was correspondence as it relates to this committee, finding more facts as it relates to, you know, getting to the truth.

Ms. ENGELBRECHT. Yes. He—he, according to the letters, indicated that it was the consensus of this committee that we needed to be investigated.

Mr. MEADOWS. Oh, he said you needed to be investigated.

Ms. ENGELBRECHT. And that he was going to be the self-appointed person to do that investigation of us, yes, sir.

Mr. MEADOWS. Okay. And so—so as we look at it—Ms. Mitchell, so the point of that is as—they were going in saying that she

should be investigated in what terms? I mean, what's the scope of that investigation?

Ms. MITCHELL. True the Vote is a 501(c)(3) now, but its application was still pending at the time, and True the Vote became very involved and is the Nation's leading organization which tries to enforce election laws and ensure the integrity of elections. True the Vote has recruited hundreds and hundreds of volunteers across the country who volunteer to help preserve the integrity of the elections in their communities and in their States. They challenge—they try to—True the Vote has filed lawsuits to encourage the—to force localities to comply with Federal law in cleaning up voter rolls, among other things.

Congressman Cummings took it upon himself—and I think that I was not representing True the Vote in that particular proceeding, but there were a series of letters sent to True the Vote from Congressman Cummings, which purported to be on behalf of the committee, using the franking privilege, and which sought to delve into the inner workings of True the Vote and to make allegations about True the Vote that were not true, demanding materials, demanding information, demanding that Catherine Engelbrecht and representatives of True the Vote make themselves available in Washington. And frankly, we think that is improper, and we will deal with that in a different proceeding, but we also—because we—but we also want to know whether there was any effort.

We want to get to the bottom of how these coincidences happened, and we're going to try to figure out whether any—if there was any staff of this committee that might have been involved in putting True the Vote on the radar screen of some of these Federal agencies. We don't know that, but we—we're going to do everything we can do to try to get to the bottom of how did this all happen.

Mr. CUMMINGS. Will the gentleman yield?

Mr. MEADOWS. Yes.

Mr. CUMMINGS. I want to thank the gentleman for his courtesy.

What she just said is absolutely incorrect and not true. Letters were sent out as the ranking member. I am the ranking member of this committee. I did nothing different than what Mr. Issa has done when looking into situations, and I don't want to put out there that I was trying to act on behalf of the committee or anything unusual. We were basically looking into voting situations and whether voters were in any way, in any way, being impeded from voting.

I want to thank the gentleman. And we have the letters, by the way, and the only one—and Chairman Issa was sent copies of all of the letters, so we weren't hiding anything.

Thank you very much for yielding.

Mr. MEADOWS. Well, and I thank the gentleman and certainly wanting to make sure that you have the opportunity.

And so, Ms. Engelbrecht, the gentleman from Maryland obviously is one that—from a targeting standpoint, so I would just let him follow up on that and make sure—and give him—yield to him in terms of following up to assure you that neither he nor his staff or anyone would have contacted the IRS to investigate you and to do that. And so I'd yield to the gentleman and let him give you those personal assurances.

Mr. CUMMINGS. I can assure you—let me just be—and I want to thank the gentleman for that.

There is no one that I know of that care more about the rights of our citizens than I do. And I'm not—and I'm sure all of us do. But just as you-all have the passion that you have, and I respect that, I, too, have the passion to make sure that no one, I don't give a—whether it's Tea Party, Republican or Democrat, nobody is blocked from voting. There is no way that I would be sitting here today, no way, unless it was for—unless we had fair and vote—the voting in this Nation. My 88-year old mother, who's probably watching us right now, could not vote.

And the last thing, I said, Ma—one of the things she said to me, I do not want to die with the thought that my people are losing their right to vote. And so I got to tell you, I want to thank the gentleman because I wanted that to be clear, and I will fight until I die, until I die, for the right to vote because it's not about me. It's about generations yet unborn and their rights. And just like you-all care about IRS not doing the things that you feel that they've done, I feel the same way. I don't want the IRS targeting anybody. But at the same time I have the same position about their right to vote. And again, I want to thank the gentleman for yielding.

Mr. MEADOWS. Well, I want the gentleman to be able to assure Ms. Engelbrecht that he—and I'll let him speak to this, but that he did not direct, nor his staff direct, anybody at the IRS to investigate you and look into this particular matter.

Mr. CUMMINGS. I can assure you of that, of what he just said.

Mr. MEADOWS. Thank you. I thank the gentleman, and I thank the chairman for his patience.

Mr. CUMMINGS. And I want to thank—I really do thank the gentleman for that opportunity.

Mr. JORDAN. Gentlelady from Illinois is recognized.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. Chairman, I am looking at a letter from the U.S. Department of Justice in response to your letter and Chairman Issa's letter requesting information pertaining to an ongoing investigation, and I did not—I don't know if this is in the record or not, but I will ask for it to be entered into the record. It's their response to your request.

Mr. JORDAN. This is response from Mr. Cole?

Ms. DUCKWORTH. This is the response from—

Mr. JORDAN. Deputy Assistant Attorney General?

Ms. DUCKWORTH. No, from Assistant Director Steven Kelly to your letter and Mr. Issa's letter.

Mr. JORDAN. Yeah, without objection.

Ms. DUCKWORTH. Thank you.

Like all Americans, I was outraged to learn of the targeting by the IRS of both conservative and progressive groups. This type of political targeting by a government agency that is supposed to have the public's trust is completely unacceptable, so I certainly understand the emotion and passion of the witnesses.

As Members of Congress, particularly members of this committee, we have a duty to look into this type of wrongdoing and mismanagement that occurred at the IRS. We also have to learn

from the mistakes and put processes in place to make sure that they never happen again, and I think this is something that all of my colleagues on this panel are committed to do doing. The Department of Justice is also rightfully investigating the incident to determine if any laws were broken.

But, you know, Mr. Chairman, I think it's completely inappropriate to provide these witnesses with a platform today to unfairly attack ranking member of the full committee Mr. Cummings. Like any member of this committee, he has the authority, and one might even say the moral obligation, to conduct investigations into serious concerns that are raised to his attention.

In this case the ranking member requested documents to investigate serious public allegations of voter disenfranchisement regarding True the Vote. He wrote letters laying out these allegations, he cited the sources for his information, and he asked True the Vote to provide documents to either prove or disprove these allegations.

Mr. Cummings' actions were no different than those of Congressman Issa when he served as this committee's ranking member, and Representative Issa sent letters after letter in his making similar document requests from all kinds of government and private entities.

I would expect that you and every other member of this committee would defend the right of all members to seek information and documents, regardless of party affiliation. It's no surprise but the group the ranking member has been investigating should lash out against him. What is surprising is that they would suggest that the FBI investigate his actions as potential illegal activity. And what is so astonishing to me is that you would give them a public forum to do so.

The false and outrageous allegations against Mr. Cummings were included in written testimony distributed by this committee in advance of today's hearing and posted on the Committee's public Web site. You knew this was coming, and you allowed it to happen. And earlier today, Mr. Cummings wrote a letter to the Board of the Office of Congressional Ethics easily debunking these claims and providing full copies of all of his correspondence with True the Vote. He also made all those letters available to the public on the Democratic Committee Web site.

I ask that his letter be made part of the hearing record today, and I regret that our committee would allow itself to be used for such a blatant political stunt.

Mr. JORDAN. Without objection.

Ms. DUCKWORTH. Thank you.

I want to sort of touch back as someone who has a large number of manufacturers in my district. I am very, very concerned for small business owners. Ms. Engelbrecht, you are a small business owner. I congratulate you on that. They're the engine of our economy, even during the recession. It's the only part of our economy that continue to grow, and you certainly provided 30-plus employees with a good living so that they could take care of their families.

Can you—am I—just answer yes or no. Am I correct in saying that you are in the business of manufacturing, heavy manufacturing of parts for oil drilling and the like? Is that correct?

Ms. ENGELBRECHT. We're a high-precision machine shop, so we make small component parts.

Ms. DUCKWORTH. You make small component parts. So you use things like milling machinery and that type of thing.

Ms. ENGELBRECHT. Computerized machinery, yes, ma'am.

Ms. DUCKWORTH. Okay. I have quite a few of those in my district, and I am actually somewhat worried that OSHA had not inspected you in 20 years. I would think that OSHA should be inspecting any manufacturing business on a regular basis, and that we would not go a whole 20 years without ever inspecting the health and safety environment for employees. And I personally—I know that you don't think that the allegations of not providing eye protection and the like is not a serious concern, but as someone who has been around a lot of heavy manufacturing, let me just say that it is concern.

And I'm out of time. I yield back, Mr. Chairman.

Mr. JORDAN. Ms. Engelbrecht, in the 20 years prior to OSHA coming there, did you ever have anyone—any serious injury at your place of business?

Ms. ENGELBRECHT. No, sir. And to be clear on the eyewear point, we do absolutely require eyewear to be worn. They just weren't happy with the kind we provided.

Mr. JORDAN. Someone probably forgot to put their goggles on one day, right?

Ms. ENGELBRECHT. Well, forgot to put the goggles on. They identified an entry—or an entry point that they thought was an exit, which cost, I don't know, \$4,300, if memory serves, something like that.

Mr. JORDAN. Thank you. We've all—we've all had businesses in our district have OSHA show up and find that they put a box in the aisleway that they forgot to move, and they get hit with a fine.

Ms. ENGELBRECHT. Exactly what happened.

Mr. JORDAN. Gentleman from Tennessee is recognized.

Mr. DESJARLAIS. Thank you, Mr. Chairman.

Certainly appreciate you-all being here today, and just reflecting on the past 3 years in this committee here, I know a lot of politically-charged issues get brought forth. But listening to the testimony today really makes you think about what being an American means, what it should mean. And, you know, we can try to divert into questions about OSHA and other violations, but what I heard was two very impassioned testimonies from two Americans that wanted to exercise their freedom to publicly speak about their preferences in an election.

We can sit and try to pretend that this didn't happen. We can go back and look at the statements. We can go back to May of 2012 when the IRS internal investigators said that there was substantial inappropriate bias going on. We can go to when Mr. Miller had his epiphany that this was going on. We can go to when the President said that this is inexcusable and intolerable; and Eric Holder, the same thing, this is unacceptable.

And so, there's no question that this happened. We can't sit up here as Democrats and Republicans and deny that the IRS did not target people. They did. They apologized. There has been hearings. Ms. Lerner came in here, took the Fifth, and Mr. Sekulow talked

about that earlier, and maybe we can talk about it again. But this is about our rights as Americans. That's why we are here today.

I'd like to think that the people on the other side of the aisle as well as the people on this side would equally listen to Occupy Wall Street or liberal groups that were targeted by a Republican President. It's about the Federal Government using their power to suppress our rights as Americans, and that's wrong in any party, in any language.

We're not a Third World country. I hope we're not a country that's run by a dictator that fixes elections. Sadly, we won't know what the outcome of the last election would have been had this targeting not taken place. We'll never know that. We won't know if the election would have been altered if we weren't misled by the YouTube video story about Benghazi. We won't know that. There's a lot of things that were done before the election that, now that it's over, people are saying, okay, well, now we got to clean up this mess, so let's pay attention to this IRS scandal, this targeting, and that happened.

Well, it didn't happen for very long because it was in July, during an economic address at Knox College in Galesburg, Illinois, that President Obama charged the Republicans turning the IRS matter into part of an endless parade of distractions, political posturing, and phony scandals. I mean, I thought we were past that.

What we're here today is to make sure you-all get a fair chance and a fair response to your questions. So, we have attorneys here today representing these clients. Have they gotten that chance yet?

Ms. MITCHELL. No, they have not. I mean, I represent many groups, and I talk to many groups. There's a particular group, Tea Party Patriots, they host a Sunday night conference call every Sunday night with grassroots groups from across the country, literally hundreds of people, who talk about things like what are some positive alternatives to the Affordable Care Act, and they hear speakers, and they are trying to educate themselves about issues so that, in turn, people in their communities or part of their groups can learn about what Congress is doing and have an impact on public policy. But many of those groups are the very same groups that were targeted, that were besmirched, that were treated and continue to be treated in a terrible manner, and now, through the IRS, is proposing to essentially silence permanently, and I—and that none of them have been interviewed by the FBI to hear the stories of what they went through.

In Catherine Engelbrecht's case, in True the Vote's case, when it got its, I want to say, third round of questions from the IRS about 2 years ago this month, there were 102 questions when you take into consideration the subparts and the subparts' subparts; 102 questions, and that was almost 2 years after the application had been filed.

And I have been doing this a long time, and I have never seen anything like it. I knew something was going on, and to say that it was boneheaded mistakes is to treat all of these people with utter contempt and disrespect and to deny what they've been through and what they are still going through. And I would implore the Democratic members of the committee and of the Con-

gress to not fall in line and try to defend something that is indefensible and to treat this as some kind of partisan ballgame.

We had this one brief shining moment last summer where both Democrats and Republicans came together, and Congress was doing its—intent upon doing its oversight duty, and the media was intent upon actually exposing wrongdoing even in this administration, and somehow that dissipated with that speech that you just referred to, and I find it very distressing.

Mr. DESJARLAIS. Thank you.

Mr. JORDAN. I thank the gentleman.

Ranking member of the full committee, the gentleman from Maryland, is recognized.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Ms. Mitchell, I just—you know, we have interviewed a whole lot of people in IRS, and perhaps there's still more to be done. And again, I want to emphasize that the Members on this side of the aisle are just as concerned about every single taxpayer being treated fairly. And so we've seen the—we've listened, and we've seen the testimony, and so we just—it's not—and I'm sure we will—if there are things to be corrected—I know that there are a lot of things that have already been corrected based on the IG's report. And so, you know, I just want you to be assured that we care about these issues, too, you know. We have constituents who we want to make sure are treated fairly, too, no matter who they are, no matter who they are. And so I want to make that clear.

I also want to go back to Mr. Meadows. I want to thank you for again yielding. And, Ms. Engelbrecht, I just—Mr. Meadows is right. There's no targeting over here. We were just trying to figure out—make sure that no one was unfairly being impeded from voting, and it's a very serious matter for me.

But the letters that I sent you, some of them concern a report, and the Institute for Research and Education on Human Rights issued that report in 2012, and their report examined your organization's activities in North Carolina, particularly with respect to where your poll watchers were placed.

The report said that your poll watchers,—and this is the report, and this is what we were trying to figure out whether it was true or not, Mr. Meadows, and it said, “go to the polls on election day and aggressively challenge the registration, the identity, or eligibility of prospective voters.” According to this report, your volunteers were concentrated in counties in North Carolina that have high percentages of African American and Latino populations. I want to ask you about this specific information in the report.

First, of the 25 counties in North Carolina with the highest African American population, the report says that True the Vote and volunteers were sent to 24 of them. Is that accurate?

Ms. ENGELBRECHT. I don't know, Congressman, because all True the Vote does is provide training. The way our electoral process works, citizens will choose their party or candidate of their choice to go and work on behalf of, but True the Vote has no control over where citizens end up ultimately working.

Mr. CUMMINGS. All right. And the report went on to say that True the Vote had poll watchers in 9 of the 10 counties with the

highest Latino populations. So you wouldn't have that information either then.

Ms. ENGELBRECHT. True the Vote provides training. We cannot place volunteers inside of the polls. Therefore, that report is fundamentally flawed.

Mr. CUMMINGS. All right. By contrast, according to the report, True the Vote had recruits in only 4 of the 25 counties with the lowest Latino population. And I assume that your answer would be the same for that; is that right?

Ms. ENGELBRECHT. It would seem to me, Congressman, that a volunteer would be sent where there were volunteer needs.

Mr. CUMMINGS. All right. And who determines those needs?

Ms. ENGELBRECHT. The party or the candidate that the citizen chooses to work on behalf of, or in some cases the county, when they need volunteers sufficient just to keep polling places open.

Mr. CUMMINGS. The report says you had only 2 volunteers covering all of the 10 counties with the fewest African American citizens.

Ms. ENGELBRECHT. We had no volunteers covering any county. We provide training, Congressman.

Mr. CUMMINGS. Now, if the numbers in the report are correct, they indicate that poll watchers were concentrated in counties where there were more minorities. It looks like the organization, if the report were accurate, was selectively targeting minority voters, and I think you would agree that you don't want that, do you? You wouldn't want that? I'm not saying—I know you're saying that didn't happen, but I'm saying that's definitely not what you were wanting.

Ms. ENGELBRECHT. No. The mission of True the Vote is to make sure that every American citizen, regardless of political party affiliation, has the opportunity to participate unimpeded in elections that are free and fair.

Mr. CUMMINGS. And on October 29th, your attorney wrote a letter saying this, "We—we operate completely in the open for anyone and everyone available to see what we do when we do it."

Is that true?

Ms. ENGELBRECHT. Absolutely.

Mr. CUMMINGS. And so, you know, obviously—I hear what you're saying, but you can understand that when we get a report like that, we are almost incumbent—I would think Republicans and Democrats would be concerned about those kinds of allegations, because those are the things that go to the fundamentals of this country, that right to vote. And you—you made it clear that you don't impede people from voting; is that right?

Ms. ENGELBRECHT. No, sir.

Mr. CUMMINGS. Very well. Thank you very much.

Mr. JORDAN. I thank the gentleman.

Ms. Engelbrecht, deep down, deep down, why do you think you had 15 visits from 4 Federal agencies in a 2-year timeframe after you—what—deep down, why do you think you were targeted?

Ms. ENGELBRECHT. I think I was targeted because of my political beliefs.

Mr. JORDAN. Because of your conservative political beliefs.

You know, I think it's actually, though, a little bigger. My guess is you were targeted because of your political beliefs, yes, but also because you were effective. It was working, right? True the Vote was having an impact. You were cleaning up voter rolls, right? You were educating people about how we should have free and fair and honest election. You were praised by attorney generals all over the country, secretary of states. I'm looking at this—I mean, it's—looking at you even had a program to—an outreach program to Hispanic Americans; is that correct?

Ms. ENGELBRECHT. Absolutely.

Mr. JORDAN. They targeted you because it was working. They said, well, we can't have—we can't have this. Here's a conservative who's making an impact. That's why you were targeted. And all while this is going on, the President is saying things, after the Citizens United, and the President President is making all kinds of statements. He says—he says things like we got shadowy groups getting involved in elections. It says—this is August 21st, 2010—“Attack Ads Run by Shadowy Groups,” foreign control corporations could be involved, this is a problem for democracy, a threat to our democracy.

Ms. Gerritson, you haven't talked much. Let me ask you this. Is the Wetumpka Tea Party a shadowy group?

Ms. GERRITSON. No.

Mr. JORDAN. You're not secret, are you?

Ms. GERRITSON. No.

Mr. JORDAN. Everyone knows who you are down home, right?

Ms. GERRITSON. That's right.

Mr. JORDAN. You don't have any foreign corporations helping you out, do you?

Ms. GERRITSON. No. We don't even have any corporate money helping us.

Mr. JORDAN. Are you trying to threaten any democracy?

Ms. GERRITSON. No.

Mr. JORDAN. You're trying to promote democracy, right, just like Ms. Engelbrecht's doing?

Ms. GERRITSON. Right.

Mr. JORDAN. You want honest elections. You want people to respect the Constitution. Are you a threat at all to the democracy, problem for the democracy? Of course not. And yet you were targeted, and in Ms. Engelbrecht's case, 4 Federal agencies in a couple-year timeframe, none of them had ever had any interaction with her before, but suddenly she's filed for tax-exempt status, and she's having an impact, and you're having an impact, and suddenly the President's making all these statements, and here comes the full weight of the Federal Government down on two ladies exercising their constitutional First Amendment political speech right.

And the minority says we shouldn't have this hearing and let you tell your story, and the minority tells us we shouldn't have Barbara Bosserman come in here, who's head of the investigation, and won't even give us the idea of who's heading it up if—and they haven't even talked to you, which makes me want to.

I want to ask one other question here. Mr. Sekulow.

Mr. SEKULOW. Yes, sir.

Mr. JORDAN. One of the—one of the many questions that your clients and Ms. Mitchell's clients got—I'm just going to rewind.

But there are all kinds of questions. I mean, we're talking about political—groups involving political activity, so they ask all these questions. One of the questions was do you have a relationship with any candidate for public office?

Mr. SEKULOW. Right.

Mr. JORDAN. Now, think about this. They're asking Ms. Gerritson—

Mr. SEKULOW. Right.

Mr. JORDAN. —Ms. Engelbrecht, and a boatload of other people across this country if they have a connection, but the person investigating this target has a connection with the most powerful individual in this country. Less than one-tenth of 1 percent of the American people give maxed-out contributions to a political candidate; that's who's heading the investigation. Now, if that's not irony, I don't know what is.

Mr. SEKULOW. It's not only irony, in our view, and I said this again with no disrespect to Ms. Bosserman and her career at the Department of Justice—

Mr. JORDAN. I don't have any either.

Mr. SEKULOW. It raised serious ethical concerns that she may well have brought up, and the Department of Justice chose to ignore. But you look at the scope of the questions that were asked, which were way outside of legitimate inquiry, I mean, incredible.

Mr. JORDAN. I've looked at it.

Mr. SEKULOW. And you look at cases like NAACP v. Alabama, NAACP v. Flowers, and others, there's a whole host of them, because what was happening in those cases was exactly what was happening here. Government agencies were targeting groups to try to intimidate them into silence, in those particular cases the NAACP, by saying things like, we'd like to see your membership list, who do you talk to, what conversations with legislatures do you have.

This has been going on since 1950. It didn't work out too good for the State of Alabama when they tried that with the NAACP. It shouldn't work out for the Department of Treasury, IRS either.

Mr. JORDAN. Great point. I just got one other question for you, and then we got to—we're going to have to recess and go vote.

This is all going on. You're an individual who's represented—as you pointed out to the minority, you've represented the American Civil Liberties Union, you've represented Democrats, you've been in front of the Supreme Court, you've seen all kinds of things. You'll see history—

Mr. SEKULOW. Yes, sir.

Mr. JORDAN. —including this same kind of thing.

I want to know, do you think this changed the impact of the 2012 Presidential election?

Mr. SEKULOW. I think there is evidence—American Enterprise Institute and others have put forward evidence that the groups being intimidated, were it even not recognized, had a significant impact on that election. I think it's very well possible. We don't want to be—we haven't had a trial on this.

Mr. JORDAN. I understand. I'm just asking you—

Mr. SEKULOW. It's very well possible that the 2012 election was impacted by an aggressive, continuous, and systematic and intimidation factor by the IRS with applications still pending, Mr. Chairman, for 3 years.

Mr. HORSFORD. Mr. Chairman, may I ask, you're going to recess before the votes. We have 15 minutes before.

Mr. JORDAN. You want to go is what you're saying?

Mr. HORSFORD. I think, yes, I would.

Mr. JORDAN. All right. The gentleman is recognized for 5 minutes, and then we'll have to recess then and come back.

Mr. HORSFORD. Thank you, Mr. Chairman. And I have 5 minutes, so I'm going to be quick.

First, I want to say to the chairman, it's unfortunate that, one, our Ranking Member Mr. Cummings was attacked in this hearing, and that the chairman provided an opportunity for two witnesses to be given a platform to do that. We have never done that. When the chairman of this committee has called for in his——

Mr. JORDAN. Would the gentleman yield?

Mr. HORSFORD. No, I will not. I have 5 minutes.

Mr. JORDAN. I understand that.

Mr. HORSFORD. No, I will not yield, Mr. Chairman. I have 5 minutes.

Mr. JORDAN. But I'm the chairman. Let me just say one thing.

Mr. HORSFORD. It's my time, Mr. Chairman. I'm not yielding my time. I have 5 minutes.

Mr. JORDAN. The gentleman just asked me not to recess.

Mr. HORSFORD. Mr. Chairman, I have questions for the witness. Can I go to my questions?

Mr. JORDAN. I can recess if you want, but I would rather you just yield me 30 seconds. I was going to make a point about Mr. Cummings' issue. The gentleman yield?

Mr. HORSFORD. For the purpose of responding to why the ranking member was attacked.

Mr. JORDAN. I don't think the ranking member was attacked, but I instructed our staff a couple of days ago to encourage Ms. Engelbrecht and Ms. Mitchell not to proceed with the ethics complaint. I further talked to them this morning not to proceed in that matter. We want the focus of this hearing to be the fact that these individuals were systematically harassed by their government, and that's what the focus is. You guys keep wanting to bring this issue up, and I've encouraged them not to pursue that.

Mr. HORSFORD. Well, I don't know how you can——

Mr. JORDAN. The gentleman is recognized.

Mr. HORSFORD. Thank you.

I don't know how in one breath you can encourage them not to do it, and then the next breath give them the very platform to do it.

Let me go to my questions.

Mr. JORDAN. Because for——

Mr. HORSFORD. Let me go to my questions.

Mr. JORDAN. —for 3 years they've been targeted by four separate agencies.

Mr. HORSFORD. And I agree.

Mr. JORDAN. That's a side that needs to be told.

Mr. HORSFORD. And I agree with that, Mr. Chairman. I agree with the fact that groups, whether they're Tea Party groups, the NAACP, or Greenpeace, have been targeted by the IRS. There's no——

Mr. JORDAN. That's not the fact. That's not the fact.

Mr. HORSFORD. There's no disputing the fact that there was wrongdoing, and there's no disputing that we should be working to fix that, but that's not what happened here today. What happened here today was an ongoing theatrics to continue the partisanship about relitigating an election that is over.

Now, the question that I have and the question that I want to represent is I'm not here as a Democrat; I'm here as a representative of the constituents of Nevada's fourth that elected me to serve them, whether they are Democrats, Republicans, Independents, or nonpartisans. I have Tea Party constituents in my district, and I respect their right, as I respect any other constituent, and I am not here to push an agenda, but to get to the facts. And so I am deeply concerned about what has transpired, and I want to fix it, but that's never what this committee ever gets to because we spend more time attacking our own members.

But regardless of which party holds power, it's unacceptable, it needs to stop, and we need to fix it. One way I think we should be working to fix it is by addressing the inconsistency of the regulation for how 501(c)(4)s are treated to begin with, and according to statute, if they engaged exclusively on social welfare activities, they may qualify for 501(c)(4) status. However, it is not how it has been applied in that way that has allowed organizations to engage in some political activity as long as it is not the primary activity of that organization.

So, in my opinion, political activity should be strictly limited based on the statute, and we should completely prohibit any 501(c)(4) from making expenditures, supporting or opposing a candidate for public office, or making monetary or in-kind contributions to political action committees or any other entity engaged in campaign activity. If we were able to get to that point, there wouldn't be this ambiguity to begin with.

Now, we've heard issues where, unfortunately, some of the groups who were—who were reviewed may not have been following this standard. Ms. Engelbrecht, your group, True the Vote, on your Web site it says one of your top goals last year was to, "trim the early voting period" is that right?

Ms. ENGELBRECHT. I'm not—I'm not sure what you're referring to.

Mr. HORSFORD. On your Web site it indicates—are you guys against early voting? Do you oppose early voting in States?

Ms. ENGELBRECHT. No, absolutely not. However, there are states that have months of early voting, and I think that that could be looked at for a number of reasons, yes.

Mr. HORSFORD. But on your Web site it does not say, "Trim the early voting period." I have a copy of your Web site. I mean, it's——

Ms. ENGELBRECHT. Taken out of in that context, it may say, in fact, but for the record, early voting is an important part of the

process. I think there's value in this in determining whether or not a month before the election day early voting is really necessary.

Mr. HORSFORD. Well, during the 2012 election we saw lines stretching so long that people couldn't even get to vote, and many people were discouraged. And from that President Obama commissioned a bipartisan commission, the head of his election and the head of Mitt Romney's election working in a bipartisan way, to come up with recommendations, and their conclusion was actually that we need to expand early voting to help voters. Would you agree that that should be an approach that should be taken based on the recommendations of that commission?

Ms. ENGELBRECHT. I—I guess I'm a little confused about why we would want to try this at this point in this hearing, but in any case, I certainly respect the findings of the commission. Our election process is deserving of a hearing unto itself.

Mr. HORSFORD. Thank you.

I'll conclude by just asking if you would respond to the request by the ranking member on the statistics around where people were placed, particularly in the North Carolina voting. Will you provide that information to the committee as it was previously requested?

Mr. JORDAN. The gentleman's time is expired.

Mr. HORSFORD. I have a question for Ms.——

Mr. JORDAN. I know, but——

Ms. ENGELBRECHT. I'm glad to respond.

Mr. JORDAN. Can you quickly? Go ahead.

Ms. ENGELBRECHT. The response is I can't do that. There is—we do not place poll watchers. That was the fundamental misunderstanding that I tried to communicate to the Ranking Member when I asked to visit with him.

Mr. JORDAN. People are allowed to go where they want to go in America still. You can't say everything they want to say, or the IRS might come after them. They are still allowed to go where they want to go, right, Ms. Engelbrecht?

Ms. ENGELBRECHT. They can always take the Fifth, can't you?

Mr. JORDAN. Well, they can do that, too, yeah.

We are going to have to recess. We want to thank our witnesses. There's restroom facilities that you can get to. We'll be back in approximately 30 minutes.

[Recess.]

Mr. JORDAN. The committee will—I should have looked up. Wait for Ms. Engelbrecht, too. The committee will be in order.

Again, I want to thank you all for being here. What you have been through is something that is just—look, we appreciate your courage. We appreciate what you have—your willingness to come here and take some of the—take some of the questions that you had to take. We appreciate it. And I recognize the gentleman from Arizona for 5 minutes.

Mr. GOSAR. Thank you, Mr. Chairman.

Before I get to my questions, I'm sad to see my colleagues aren't over here on the other side of the aisle, because I think it would be nice to see the application of us drilling the Tides Foundation in the same place that you are. That would be a wonderful conversation, I think. So, but thank you very much, Mr. Chairman for the question, you know, for this opportunity.

This is a serious issue in which the executive branch has abused its powers for political gain. My constituents in Arizona are mortified and angry. Congress must ensure that the investigation into the targeting of these groups is being conducted in a thorough, timely, and appropriate fashion. So I'm going to ask some questions very quickly to each of the witnesses, but I have a few to get through, so if you can keep it pretty concise, I think it will be pretty self-explanatory.

Would the witnesses agree that the administration and the enforcement of the law should be done impartially and without regard to political affiliation?

Ms. ENGELBRECHT. Absolutely.

Ms. MITCHELL. The Constitution requires it.

Ms. GERRITSON. I agree.

Mr. SEKULOW. Yes, sir.

Mr. GOSAR. So real justice should be blind?

Ms. ENGELBRECHT. Absolutely.

Ms. MITCHELL. Yes, sir.

Mr. GOSAR. Do the witnesses recall President Obama and Attorney General Eric Holder expressing their supposed outrage that the IRS would target organizations that do not share their political views?

Ms. MITCHELL. Yes. May 15th.

Mr. GOSAR. Do you happen to share in their outrage?

Ms. GERRITSON. Yes.

Ms. MITCHELL. Oh, absolutely.

Ms. ENGELBRECHT. Absolutely.

Mr. GOSAR. So do I. And so I did find it terribly ironic that the President and the Attorney General expressed such an apparent outrage over this type of behavior, only later to assign the task to an investigator that is biased towards the administration.

Yes, Miss Barbara Bosserman, one of the lead investigators, donated nearly \$7,000 to the President and the Democratic National Committee, and while I believe in everyone's right—it's everyone's right to donate political donations, I do not believe that she is the best fit to lead in this investigation and potentially embarrass her party or the man she wanted to be President.

Some might say the Department of Justice agrees that Ms. Bosserman leading the investigation is inappropriate. The committee asked the DOJ to allow Ms. Bosserman to attend the hearing today, and the answer to the question was they refused outright. DOJ officials had the nerve to claim that making Ms. Bosserman available to the Oversight Committee was tantamount to the targeting of a Federal employee. The use of the word "targeting" was not incidental. The DOJ was explicitly attempting to draw similarities between the IRS targeting of conservative groups to the House Oversight Committee targeting Federal employees.

To make such an assertion is to imply that the oversight inquiries are inherently partisan, and therefore the administration can and should refuse to provide witnesses to answer questions when called upon.

So I ask you witnesses, would you agree with that assessment?

Ms. MITCHELL. That they—yes. That they were targeting?

Mr. GOSAR. Yes.

Ms. MITCHELL. Yes, they are targeting. They certainly targeted many, many of our clients.

Mr. GOSAR. But they are also trying to utilize it like—that we on this committee are actually targeting Federal employees. I mean, you can see a very strong—

Ms. MITCHELL. They have twisted the statute. They have twisted the term.

Mr. SEKULOW. It is actually—what they are doing is conflating two issues. One is the IRS engaged in a systematic targeting, acknowledged systematic targeting. The selection of the Department of Justice attorney to head the investigation, they are trying to turn the targeting because we raised the concern of bias, which, of course, as a defense counsel, in our particular case, or as the plaintiff in lawsuit, and there is a Federal investigation, of course we are going to bring that up.

So they are trying to turn what is an obligation of a lawyer to not have the appearance of impropriety, and they are trying to turn that as individuals on this committee targeting this lawyer, which has never been anybody's—

Mr. GOSAR. Yeah, I agree with you. So, but let me switch gears for a minute because you just took me right to where I wanted to be.

Do the witnesses happen to know whether it is legal or illegal for an IRS employee to target groups based on political affiliation or ideology?

Mr. SEKULOW. They acknowledged it. I mean, Congressman, as you know, the IRS—this is not a case where we are trying to figure out what the IRS did. They have said affirmatively, we targeted by name, we created a “be on the lookout” list, and they said, we were wrong. That was incorrect, “We apologize.” That’s what Lois Lerner said.

Mr. GOSAR. Well, but then according to Steve Miller, the former Commissioner of the IRS, he actually said it is absolutely not illegal. He made those very, very comments.

Mr. SEKULOW. Yeah, well, I argued a case to the Supreme Court of the United States actually dealing with viewpoint discrimination, and all nine Justices said it was illegal.

Mr. GOSAR. Yeah. Well, that’s why we have to rephrase the bureaucracy and the bureaucrats—

Mr. SEKULOW. Yes, sir.

Mr. GOSAR. —into good behavior. I actually put a bill called the IRS Anti-Abuse Act, which would make and codify political affiliation or ideology as a protected class in the IRS—the Internal Revenue Code, but also expressly prohibits an employee from being threatened to audit an individual or a group due to arbitrary, capricious, or politically motivated reasons. Is it your recommendation that such provisions should become law?

Mr. SEKULOW. I think so. I think right now the IRS is institutionally incapable of self-correcting, so legislative oversight is necessary.

Ms. MITCHELL. Congressman, I would like to add that I just received a text a moment ago in the recess from a person who said: I built a Web site for our local Tea Party group, and now I have been audited by the IRS. I have heard stories from people all over

the country about having for the first time in their lives become somewhat politically active, or active in advocacy activities, and suddenly they have been audited, or their business has been audited. And I just have to think that this cannot be coincidental. And somebody needs to be doing the statistical analysis of those who have been selected for audit over the past 4 years.

Mr. GOSAR. Absolutely.

I want to close real quickly, sir, for your indulgence. I will close by noting again that the IRS Commissioner has now approved \$62.5 million in bonuses to the IRS employees for their work in 2013 to boost their morale. How absurd. I would say that those millions might be best used at the IRS to boost the ethical training and boost awareness of the United States Constitution.

Thank you, sir. I yield back.

Mr. MEADOWS. [Presiding.] I thank the gentleman from Arizona and will go to the gentleman from Michigan Mr. Bentivolio.

Mr. BENTIVOLIO. Good afternoon, Mr. Chairman, and thank you. And thank you, distinguished members of the subcommittee and those testifying before us today. Thank you very much.

We appreciate hearing all of these stories from our witnesses, and it's awful what has happened to you. And hearing you and your testimony and those from my own district, it appears that the President has a war on the Constitution. You know, I always believed the IRS was supposed to be objective and treat everybody equally, but under this administration and IRS, I guess, some groups are more equal than others.

It has almost been 9 months since this has been made public, and we are no further along than when the initial report was released. Instead, we get typical Washington doubletalk, side-stepping the issue, happy talk, and verbal moon walking. These individuals testifying before us today deserve to have action taken. We need to hold this administration and the IRS accountable, and I'm committed to making that happen.

In the hearing that was held in May of 2013, I asked Mr. Shulman of the IRS numerous questions about the Constitution and Bill of Rights. I asked if IRS agents take classes on the Constitution or Bill of Rights, and he didn't know. Mr. Shulman is a lawyer, and I asked him if he knew the 1st, 2nd, and 19th amendments. He told me he didn't have the Constitution memorized. That's pretty bad.

I'm guessing—Ms. Engelbrecht, right?

Ms. ENGELBRECHT. Yes, sir.

Mr. BENTIVOLIO. Thank you.

I'm guessing you're all familiar with the Constitution and Bill of Rights. Can you tell me what the First Amendment is.

Ms. ENGELBRECHT. First Amendment gives us freedom of religion, and freedom of speech.

Mr. BENTIVOLIO. Right, and a few others. How about the Second Amendment?

Ms. ENGELBRECHT. The right to keep and bear arms.

Mr. BENTIVOLIO. Nineteenth Amendment?

Ms. ENGELBRECHT. Gave women the right to vote.

Mr. BENTIVOLIO. My favorite amendment, yes.

Do you think IRS agents should have the right or should have to take training in the Constitution and Bill of Rights?

Ms. ENGELBRECHT. Absolutely.

Mr. BENTIVOLIO. Now, I want to ask you about Tea Party. I'm a member of the Tea Party, but I can't really say that because I never filled out an application to join the Tea Party. Is that something—do you have to fill out an application to join the Tea Party?

Ms. ENGELBRECHT. No. Tea Party is a frame of mind.

Mr. BENTIVOLIO. That's right. You just show up, and you listen to what they're saying, and if you agree with it, you know, you can join in the conversation, learn more possibly, or just leave, correct?

Ms. ENGELBRECHT. That's correct.

Mr. BENTIVOLIO. You are peacefully assembling to address some grievances and ask some questions. Because I think, if you're like me, you felt something was wrong; something was wrong in Washington, but you couldn't really put your finger on it. Is that a correct assumption?

Ms. ENGELBRECHT. That's absolutely the correct assumption. And I assumed that we could ask questions.

Mr. BENTIVOLIO. That's right, you can. And, you know, as a former teacher, kids would come in and they would ask questions. I never—you know, I tried to answer those questions as best I could, and if I didn't know the answer, I will try to get the answer for them. Is that pretty much what you're doing?

Ms. ENGELBRECHT. That's what I'm trying to do.

Mr. BENTIVOLIO. Right, I understand. And in civics class—do you remember civics class?

Ms. ENGELBRECHT. I remember—yes, sir.

Mr. BENTIVOLIO. A classroom full of kids from all kinds of backgrounds, you name it, and he or she, the civics teacher, said, you have an obligation to get involved in what's going on in the world.

Did you ever hear something like that or words to that effect?

Ms. ENGELBRECHT. That's how I was raised.

Mr. BENTIVOLIO. That's right. You were raised—

Ms. ENGELBRECHT. You have an obligation to give back to your community.

Mr. BENTIVOLIO. That's how I was raised and so many other Americans. And now that you're doing that, the government, the IRS, OSHA—and I have no doubt because I have experienced it myself—when my fellow teachers found out I was running for office with an R after my name, suddenly couldn't do anything right. Never got a complaint. And all of a sudden I'm a conservative.

You know, I have a great belief that this country, the greatest—well, that this country—how can I say this—the greatest thing about this country is our cultural, religious, and ethnic diversity. And, you know, I believe the other side agrees with that, too, unless, of course, you have an R or you're conservative after your name. Would you agree with that assumption?

Ms. ENGELBRECHT. I think it's a correct assumption that the best thing about this country is its people, and maybe we've lost our way for a little bit, but we're finding it back.

Mr. BENTIVOLIO. God bless you. Thank you for what you're doing. I just want you to know, my office has a door that's always open.

You are always welcome, as is anybody else. Feel free to stop in at any time.

Ms. ENGELBRECHT. Thank you.

Mr. BENTIVOLIO. Thank you, Mr. Chairman, I appreciate it, and God bless you, all of you.

Mr. MEADOWS. I thank the gentleman from Michigan, and I go now to the gentleman and friend from Texas, the Honorable Judge Poe.

Mr. POE. I thank the chairman and the ranking member for letting me sit on the committee today.

Ms. Engelbrecht, I have some questions for you. Short answers would work okay.

Ms. ENGELBRECHT. Okay.

Mr. POE. Have you—after you started King Street Patriots and True the Vote, were you visited by the FBI?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Were you visited by the FBI terrorist squad or whatever they call themselves, that investigate terrorists?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. How many times did you have either meetings or conversations with the FBI?

Ms. ENGELBRECHT. There were six inquiries.

Mr. POE. Were you visited by OSHA?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. How many times?

Ms. ENGELBRECHT. Once.

Mr. POE. The ATF?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. How many times were you visited or audited by the ATF?

Ms. ENGELBRECHT. Twice.

Mr. POE. And you were also visited by the Texas Commission on Environmental Quality?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. The State agency of the EPA; is that correct?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. The IRS, how many times?

Ms. ENGELBRECHT. Two personal audits, two business audits.

Mr. POE. At some point did you believe you were under some criminal investigation?

Ms. ENGELBRECHT. At some point I didn't quite know what to think.

Mr. POE. Did you come to me and ask for a FOIA request to see if you were being investigated criminally?

Ms. ENGELBRECHT. Yes, sir, I did.

Mr. POE. And we got a response from the FBI?

Ms. ENGELBRECHT. Yes, sir, we did.

Mr. POE. And they said what?

Ms. ENGELBRECHT. They said that they were not.

Mr. POE. They were not investigating you for criminal enterprises—

Ms. ENGELBRECHT. Correct.

Mr. POE. —to your knowledge?

Ms. ENGELBRECHT. Correct.

Mr. POE. Do you think that—well, let me ask you this: Were you, at any time after you started these two groups, harassed by so-called liberal or progressive groups?

Ms. ENGELBRECHT. Yes, sir, on a very regular basis.

Mr. POE. And what does that mean, “harassed”?

Ms. ENGELBRECHT. Well, that can mean many things, but speaking falsehoods, bearing false witness, trying to take something like election integrity and turn it into something that divides us instead of unites us.

Mr. POE. And in your opinion, were you harassed by legislators?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Do you believe that there should be a special prosecutor to investigate the IRS?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. In 2013, on May the 14th, I sent Eric Holder a letter. Are you aware of the letter that I sent him asking for a special prosecutor and asking a bunch of questions about the IRS?

Ms. ENGELBRECHT. Yes, sir, I am.

Mr. POE. I have not received a response from Eric Holder on these. Have you received a response?

Ms. ENGELBRECHT. No, sir.

Mr. POE. Were you asked by the FBI—or the IRS, rather, to produce all of the tweets that you ever tweeted?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Facebook posts?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Did you comply with that?

Ms. ENGELBRECHT. I don’t do Facebook or Twitter.

Mr. POE. The IRS, they wanted to know all of the places that you spoke publicly.

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Did they want copies of your speeches?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Let’s get this correct. The Federal Government wanted a copy of a citizen’s speech in a public forum.

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Did they want to know where you were going to speak in the future?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Did they want to know the names of the groups you spoke to?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Did they want the mailing lists or the attendee list of the people that were in attendance at the places that you spoke?

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. They wanted the speech. They wanted to know where it was. They wanted to know what she said. They wanted to know who was there.

Ms. ENGELBRECHT. Yes, sir.

Mr. POE. Do you find that a little oppressive?

Ms. ENGELBRECHT. I find it highly political.

Mr. POE. Do you think that the United States Constitution lets the Federal Government swoop in and kill the right of free speech by demanding all of this information?

Ms. ENGELBRECHT. No. That's not what the Constitution was built to do.

Mr. POE. I had a chance to be in the Soviet Union back in the 1980s. The people were totally oppressed by government. They were afraid of government. They were afraid to say anything or write anything about government because government would punish them, take their job, put them in jail, harass them, take their money, all of those things.

Did you ever think that we would see in the United States of America a government, through its agencies, the IRS, the FBI, OSHA, EPA, ATF, take on a citizen trying to keep you from criticizing government? Did you ever think that you would see that in this country?

Ms. ENGELBRECHT. No, sir, I never thought that I would see—I never thought that I would see that, but I do see it, it is happening, and I hope that the American public sees this for what it is.

Mr. MEADOWS. The gentlewoman will suspend.

The chairman is responsible under the rules of the House and the rules of this committee to maintain order and preserve the decorum in the room. So we ask everybody to abide by that.

Go ahead, Ms. Engelbrecht.

Mr. POE. I didn't hear your answer, I'm sorry.

Ms. ENGELBRECHT. I—my answer was no, I never believed that this could happen, and for many years I didn't want to believe that by all appearances what seemed to be happening was, in fact, happening. And it is my hope now that we don't gloss over these moments, that we see them in their fullness for what they are, because it threatens to undermine the very fabric of this Republic, sir.

Mr. POE. Ms. Gerritson, did you ever think that that would—the things that I have mentioned that happened to you and Ms. Engelbrecht, did you ever as an American think that you would see government swoop down and punish you for exercising the right to criticize?

Ms. GERRITSON. Absolutely not.

Mr. POE. How does that make you feel as an American citizen?

Ms. GERRITSON. Angry.

Mr. POE. And you testified that you don't think we're doing enough to solve this oppression?

Ms. GERRITSON. Correct.

Mr. POE. Lastly, if I may, Mr. Chairman, my grandmother, who was my most influential person, a Democrat, by the way, to my friends over there, used to say there was nothing more powerful than a woman that has made up her mind. I think we have two of those—three of those women right here today. Thank you for being here. Thank you for your fight, because, you see, America is worth fighting for.

Ms. ENGELBRECHT. Amen.

Ms. MITCHELL. Amen.

Mr. POE. And I yield back.

Mr. JORDAN. I thank the gentleman. I walked in right at the end of that, but it sounded like a great presentation. I call it "mom's on a mission." If mom's on a mission, look out. Good things are

going to happen. So I echo what the gentleman from Texas had to say.

Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

So I have sat through today's hearing, and, first of all, I want to say I appreciate all of you coming. Your viewpoint is appreciated. It is understood. I wish we had opposing viewpoints here today for a fuller discussion, but that doesn't discount the value of your viewpoint.

Now, one thing I wanted to raise was I think one or more of you have brought up the idea that people have said that there is no evidence of wrongdoing at the IRS; that there is no evidence of corruption, or however you want to say it; and that that is inappropriate because the investigation is ongoing.

Which one of you said something like that?

Mr. SEKULOW. I did.

Ms. MITCHELL. All of us.

Mr. CARTWRIGHT. Professor Sekulow, I think.

Mr. SEKULOW. Mr.—Jay, is fine.

Mr. CARTWRIGHT. It's a good point, Jay, and it's something that we hear both ways. We as Americans are used to TV reporters putting microphones in prosecutors' faces and investigators' faces, police chiefs' faces, asking for details of an investigation. And what is the phrase that they all intone always? I can't comment on an investigation—ongoing investigation.

And as Americans we understand that, because you can prejudice an investigation if you release details, if you give up clues, if you can—you can let guilty people off the hook if you do that, if you comment on ongoing investigations. So I think we as Americans understand that.

But I think it works both way, doesn't it? Before you impugn an investigation, before you condemn an investigation for using shoddy practices or unfair viewpoints, or whatever it is, before you attack an investigation, by the same token you want to wait until the end of it to see how it comes out.

And to that point I want to ask, have—do any of you have information that this investigation is over, that it is complete at this point? If you do, weigh in.

Mr. SEKULOW. Let me say from my perspective, because we have been involved in the situation since its outset, with regard to the investigations, two aspects. There is an ongoing Department of Justice investigation, and then, of course, you have the committee's investigation.

On the Department of Justice investigation, I think it's important to point this out. The wrongdoing by the IRS was acknowledged by the Internal Revenue Service, and for that reason, Congressman, it's different than a situation where you are trying to determine if, in fact, there was wrongdoing. Here the wrongdoing was acknowledged by the IRS. They offered, as I said, the apology for it. But they acknowledged they did inappropriate targeting. That's number one. So the—

Mr. CARTWRIGHT. I want to say, Professor Sekulow, we on this entire committee, on both sides—

Mr. SEKULOW. Right.

Mr. CARTWRIGHT. —were in a high state of outrage when we first found out about it.

Mr. SEKULOW. Yes.

Mr. CARTWRIGHT. But the answer is that no, we have not heard from the Justice Department that they are complete in their investigation. And I want to make the point that maybe, just maybe, it would make sense for all of us as Americans to step back and let them do their work before they attack—before we attack their methods or their conclusions.

Mr. SEKULOW. Well, then, perhaps—

Mr. CARTWRIGHT. I only have limited time.

Mr. SEKULOW. I understand.

Mr. CARTWRIGHT. The second point I wanted to make, there have been references to Ms. Bosserman, Barbara Kay Bosserman, who was invited to come, but did not come today. It is highly irregular, it is really unprecedented, to haul an investigator in before a congressional committee in the middle of an investigation for the very same reasons I just discussed, because it can prejudice an investigation, because it can really foul it up. And that's why we don't do that.

But some of you, one or more of you, have said that Ms. Bosserman was leading the investigation. And I wonder, is any of you privy to who is leading the investigation, because Attorney General Holder testified, I believe it was in the Ways and Means Committee—no, I believe in the Senate he testified that Ms. Bosserman is not, in fact, leading that investigation. So if one or more of you is privy to information that she is, in fact, the lead on this investigation, now is the time to share your information with us.

Mr. SEKULOW. Well, let me do that to clarify this for you, Congressman. Now, we, our office, and I believe we are the only ones so far, had a conversation with the Department of Justice. The highest-ranking official on that call was Ms. Bosserman. And, again, I want to be very clear, and I appreciate you giving me a moment to do this. We are not disparaging her credentials at all. It has raised issues, significant issues, but I also think it is important to point out that with regard to her relationship within the Department of Justice, she is a senior official in the Department of Justice and the highest-ranking member of the Department of Justice that we work with.

Mr. CARTWRIGHT. So what you're saying is that you suspect that she may be in the lead of this investigation, but the truth of—

Mr. SEKULOW. We were told that she is.

Mr. CARTWRIGHT. —the matter is that you don't know, and, in fact, Attorney General Eric Holder has said that she is not. So do you mean to really come in here and call the Attorney General of the United States a liar?

Mr. SEKULOW. With due respect, nobody has called the Attorney General of the United States a liar. What I have said is this: We have been told that the highest-ranking official at the Department of Justice, Congressman, is Ms. Bosserman. That is what we have been told by the Department of Justice.

Mr. JORDAN. Mr. Sekulow and Mr. Cartwright, the Attorney General didn't say that she was not the head of the investigation.

Mr. SEKULOW. That's right. He did not know is what he said.

Mr. JORDAN. He said she's part of the team. What Mr. Sekulow has said is she's the highest-ranking official part of the team, which would lead one to believe she is heading the investigation. Plus we have what took place in practice. People we have interviewed, the committee staff has interviewed, which your minority staff was in those same interviews, told us the person asking them the questions when Justice Department interviewed them was Barbara Bosserman.

Mr. SEKULOW. Correct.

Mr. JORDAN. So any logical person, anyone with a brain can figure out she's heading the investigation. The only one that won't admit that is the Attorney General and the Democrat members of this committee. Anyone can figure that out. Of course she's heading the investigation. And, oh, by the way, and this is the underlying point, she gave \$6,750 to the President and the Democratic National Committee, and she should have recused herself by the plain language of the ethics rules in the Justice Department. And you can defend her, and you can send me a letter and say she can't—she shouldn't come here. Don't subpoena her. Don't bring her in to answer the questions. You can do all that, and you can also say, no liberal groups were invited. In fact, I would ask you, tell me one liberal group you wanted to invite.

Mr. CARTWRIGHT. Let me back up a second.

Mr. JORDAN. Do you have a name of a liberal group you want to invite here? Tell me one liberal group that's targeted that that you know the name of that you want to invite here.

Mr. CARTWRIGHT. The point I'm trying to make is this is—

Mr. JORDAN. I can point to 41 Mr. Sekulow knows. I can point to True the Vote. I can point to the Wetumpka Tea Party in Alabama. Tell me one you can point to.

Mr. CARTWRIGHT. It's—your opinion is well taken, the opinions of the testifying witnesses are well taken, but that's what they are. They are opinions about who is leading this investigation, and we here in the Oversight and Government Reform Committee believe in dealing in facts.

Mr. JORDAN. Mr. Sekulow. Taking back my time—

Mr. SEKULOW. Congressman, it is a serious charge. We have been told—maybe you know something I don't. We've been told that she is the lead for the Department of Justice on these investigations including not just with witnesses that we may produce, but that you all have produced. So maybe they have told you something we don't know, or maybe they are not telling us the truth.

And also, I just would add the point here, you're talking about prejudging an investigation? The President of the United States said not one smidgeon of corruption. That's very difficult—

Mr. CARTWRIGHT. That's what I said leading into it. It's fair to criticize him for that, but by the same token, let's all stand back and wait until the end of the investigation and reach a measured and reasoned evaluation.

Mr. SEKULOW. Congressman, I don't have the luxury of standing back. I'm in Federal court against the IRS. I don't have that luxury. I've got 41 clients. I don't get the luxury to sit back.

Mr. JORDAN. I want to thank all of you again for being here. I know the Engelbrechts have a—the gentleman from Texas is recognized.

Mr. POE. I ask unanimous consent to insert into the record the three-page letter I sent to Attorney General Eric Holder on May 14, 2013, asking for a special prosecutor, where he did not respond. I ask unanimous consent.

Mr. JORDAN. Without objection, I appreciate that. I appreciate that, Judge.

Mr. JORDAN. Again, the Engelbrechts have a plane to catch. I know—quickly.

Ms. MITCHELL. I have one question. I have one question.

Mr. JORDAN. Go ahead.

Ms. MITCHELL. I think there's a difference here between—and with all due respect to the ranking member, there is no question that these groups, my clients, many more who are—many more people, hundreds of groups, hundreds of groups involving thousands of citizens, there is no debate about the fact that they were subjected to a process which was instituted within the IRS in late 2009 or early 2010 which changed the historic procedural manner that is published on the Web site of the IRS, that is the publicly available process that is supposed to be followed in reviewing applications for exempt status. There's no question that that happened.

So what I think when you're saying the question of wrongdoing, that is the wrongdoing. We have—we're supposed to be a Nation of laws, and the rule of law is that the process is published. Anybody who applies is subjected to the same process, the same procedures, and something changed inside the IRS, and that happened. There's no debate about that.

Mr. JORDAN. Right.

Ms. MITCHELL. And that was wrong.

Now, whether it rises to a criminal offense, I have mentioned several things that are criminal offenses. Those are the things we take exception to that the Justice Department needs to be investigating, that they really don't—they really haven't, to our knowledge or satisfaction. And people are calling for the appointment of special counsel. But let's not go away from this hearing with any debate about whether or not the facts exist as they exist, which is that hundreds of grassroots organizations were subjected to an entirely new review process created in Washington and inflicted upon them by politically powerful people.

Mr. JORDAN. Well said, Ms. Mitchell.

Ms. Engelbrecht, thank you for coming. Ms. Mitchell, you as well. Ms. Gerritson, thank you so much. Mr. Sekulow, I want to thank you, too.

The committee is adjourned.

[Whereupon, at 12:57 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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February 4, 2014

Committee on Oversight
and Government Reform
c/o Donald K. Sherman, Counsel
U.S. House of Representatives
Washington, DC 10515

Re: "The IRS Targeting Investigation" - Hearing scheduled for February 6, 2014

To the Chairman and Members of the Committee:

I understand that your Committee is considering how conflict of interest laws apply to federal prosecutors. Specifically, do career federal prosecutors who previously contributed to the presidential campaign or political party of the incumbent President have a conflict of interest that precludes them from investigating federal agency officials? I submit this letter to explain why this scenario does not comprise a conflict of interest under prevailing ethics standards and law.

Introduction

By way of introduction, I am a former federal prosecutor and, as a legal academic, have spent much of the past 27 years studying questions of legal, judicial, prosecutorial and government ethics.

I served as an Assistant U.S. Attorney in the Southern District of New York from 1983 to 1987, after serving as a judicial law clerk. I served under U.S. Attorney Rudolph W. Giuliani throughout my time in the U.S. Attorney's Office. Before leaving in 1987, I served as Deputy Chief Appellate Attorney and Chief Appellate Attorney in the Criminal Division. My responsibilities included advising other prosecutors on legal and ethical questions.

Since 1987, I have taught full-time at Fordham Law School, where I now direct the Stein Center for Law and Ethics. For the past 27 years, I have taught courses relating to legal ethics and criminal law and procedure, including a seminar on "Ethics in Criminal Advocacy." As an academic, I have written more than 25 articles on prosecutors' ethics and I have spoken widely on this subject, including at programs of the U.S. Department of Justice, the National Association of Former United States Attorneys, the American Bar Association (ABA), and other national, state and local organizations and entities. I have also engaged in substantial professional service involving legal ethics generally and prosecutors' ethics particularly. Among other things, I have chaired the ABA Criminal Justice Section and that Section's ethics committee, chaired the New York State Bar Association's ethics committee, and served for more than a decade on the committee that drafts the national bar examination on lawyers' professional responsibility (the MPRE).

While teaching law full-time, I have also engaged in various part-time public service relating to issues of government integrity. I served as Associate Counsel in the Office of Independent Counsel Lawrence Walsh (the Iran/Contra prosecutor) and as a consultant to the N.Y.S. Commission on Government Integrity (under Fordham's then-Dean, John Feerick). In 1995, then-Mayor Giuliani appointed me to serve on the five-member New York City Conflicts of Interest Board, which interprets and enforces the city's conflicts of interest law for government officials and employees. I was subsequently reappointed and served on the Board until early 2005.

Finally, in light of the subject of this letter, I note that I am registered to vote as an "independent."

Discussion

I understand that this Committee is considering the following three questions (among others) on which I hope to be of assistance.

1. *Do past political contributions by a career prosecutor to a Presidential campaign or political party create a conflict of interest in a multi-agency investigation regarding allegations of political targeting by federal agency officials?*

As lawyers, federal prosecutors are governed by the professional conduct rules of the states in which they work. In most states, these rules are based on the ABA Model Rules of Professional Conduct. All state codes of professional conduct for lawyers include provisions on conflicts of interest. In general, the rules provide that a lawyer has a conflict of interest if there is a significant risk that the lawyer's representation will be materially limited by the lawyer's personal interest.

As "ministers of justice," prosecutors are expected to conduct investigations and prosecutions without regard to partisan political considerations. Indeed, the ABA Standards governing prosecutors' conflicts of interest provide: "A prosecutor should not permit his or her professional judgment or obligations to be affected by his or her own political . . . interests."¹ One can envision situations in which prosecutors' political interests would significantly limit their ability to pursue justice evenhandedly, and in such situations, prosecutors would be obligated to step aside. An elected prosecutor's investigation of a campaign rival would surely be one such situation.

I understand that in an investigation of possible misconduct by public officials, the particular prosecutor's political affiliation or level of political engagement might seem to matter. A prosecutor who contributed financially to the winning side might be suspected of favoring officials in the incumbent administration or of harboring an interest in avoiding embarrassment to the administration. A prosecutor who contributed financially to the losing side might be suspected of bias against the incumbents or of desiring to embarrass them. Even a prosecutor who made no financial contribution but who voted for one side or the other might be suspected of bias or favoritism.

Under the prevailing legal and ethical understandings, however, this scenario does not constitute a conflict of interest. The relevant standards for prosecutors – e.g., the ABA rules and standards and the

¹ ABA Standards Relating to the Administration of Criminal Justice, The Prosecution Function, Standard 3-1.3(f) (3d ed. 1992).

National District Attorneys Association standards -- do not forbid prosecutors from making political contributions. Nothing in the rules or standards requires prosecutors who made contributions to recuse themselves from cases involving public officials. This is in contrast to rules of judicial conduct that forbid judges from making contributions to political organizations and candidates. Prosecutors are not held to the same level of neutrality and nonpartisanship as judges. As the Supreme Court has observed, "the strict requirements of neutrality cannot be the same for . . . prosecutors as for judges."²

Likewise, judicial decisions do not support the premise that prosecutors who make campaign contributions have a conflict of interest in cases of political significance. In criminal cases, the question of whether a prosecutor has a conflict of interest may be raised by a criminal defendant or by an individual who is the subject of a criminal investigation. Additionally, in some jurisdictions, prosecutors who perceive that they have a conflict of interest may ask the court to appoint an independent prosecutor. Thus, courts have had occasion to issue opinions regarding whether a particular prosecutor must be disqualified, or an independent prosecutor appointed, because of an alleged conflict. Prosecutors who have prior lawyer-client relationships, or family or business relationships, with a defendant or potential defendant are ordinarily understood to have a significant personal interest that may impair their impartiality. But no court would seriously entertain a claim that the prosecutor should be disqualified from investigating or prosecuting officials of an executive-branch agency because the prosecutor previously made political donations supporting or opposing the incumbent president or the president's party.

2. *Do past political contributions by a career prosecutor to a Presidential campaign or political party create grounds for disqualification arising from a personal or "political relationship" under 28 C.F.R. § 45.2 in a multi-agency investigation regarding allegations of misconduct of federal agency officials?*

Federal prosecutors are subject to 28 C.F.R. § 45.2, which requires prosecutors to be disqualified from cases in which they have a personal or "political relationship" with the subject of the investigation or with another person or organization having a specific and substantial interest in the investigation or prosecution. The provision defines a disqualifying "political relationship" to mean "a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof" (emphasis added).³

Section 45.2 plainly does not apply to a career prosecutor who contributed to the incumbent president's campaign or political party. The provision is very limited. It applies only to a prosecutor whose close identification with an official, candidate, party or organization arises from the prosecutor's prior service

² *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 250 (1980).

³ For purposes of the regulation, a "personal relationship" is "a close and substantial connection of the type normally viewed as likely to induce partiality," which includes a close familial relationship ("father, mother, brother, sister, child and spouse") and may include a friendship. In other words, a prosecutor cannot investigate a friend or family member or conduct a prosecution in which a friend or family member has any other significant role (e.g., as victim or witness). This restriction is obviously inapplicable here.

as a *principal adviser* to the official or candidate or as a *principal official* of the party or organization that is the subject of the investigation or otherwise an interested party. Few, if any, federal prosecutors fit into that category. A campaign contributor does not, because he or she is not “a principal adviser” or a “principal official.”

That this federal regulation has a “narrow definition of a disqualifying political conflict of interest” was noted in *In re: Independent Counsel Kenneth W. Starr*,⁴ where the court of appeals refused to revive an ethics grievance, filed against Independent Counsel Kenneth Starr, maintaining that the Independent Counsel had a conflict of interest in the Whitewater investigation arising out of his political affiliation with the Republican Party. In a concurring opinion, Circuit Judge Loken explained that “it is not surprising that federal law does not restrict or disqualify prosecutors on the basis of vaguely defined political conflicts of interest,” and that “even a brief look at history will confirm [that] judicial reluctance to question a prosecutor’s background is even more important” in an investigation of government misconduct.⁵ That history includes the appointment of corruption investigators and prosecutors from “highly partisan backgrounds and [with] strong personal political ambitions.”⁶ Making a campaign contribution reflects a low level of political involvement by comparison.

3. *Is it appropriate for Department of Justice leadership to check the political donations made by a career prosecutor before assigning that person to join a multi-agency investigation involving victims claiming that they were treated unfairly because of their political beliefs?*

As discussed above, a career prosecutor assigned to investigate a federal official would not have a conflict of interest simply because the prosecutor contributed to one or the other party or to one or the other presidential candidate. I am unaware of any federal or state jurisdiction in which prosecutors investigating or prosecuting government corruption cases are limited to those who are so politically disengaged. Because political donations are not a relevant consideration in making assignments, it would not be appropriate for Department of Justice leadership to check career prosecutors’ political donations before assigning them to an investigation.

There has never been a political-affiliation litmus test for prosecutors engaged in government corruption investigations or other investigations of government officials. Rather, it should be assumed that prosecutors, as professionals, will put their political preferences to the side, because their fundamental allegiance is to the rule of law and to pursuing justice.

Very truly yours,



Bruce A. Green

⁴ 152 F.3d 741, 753 (8th Cir. 1998) (Loken, J., concurring).

⁵ *Id.*

⁶ *Id.* at 754.

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February 5, 2014

Donald K. Sherman, Esq.
Counsel, Committee on Oversight and Government Reform
U.S. House of Representatives
Room 504A, Ford House Office Building
Washington, DC 20515

Re: Prosecutorial Disqualification

Dear Mr. Sherman:

Although I lack deep familiarity with the matter you are inquiring about, I can offer some brief thoughts on the questions you have posed to me, specifically:

Do past political contributions by a career prosecutor to a Presidential campaign or political party create a conflict of interest in a multi-agency investigation regarding allegations of political targeting by federal agency officials?

Do past political contributions by a career prosecutor to a Presidential campaign or political party create grounds for disqualification arising from a personal or "political relationship" under 28 C.F.R. § 45.2 in a multi-agency investigation regarding allegations of misconduct of federal agency officials?

Is it appropriate for Department of Justice leadership to check the political donations made by a career prosecutor before assigning that person to join a multi-agency investigation involving victims claiming that they were treated unfairly because of their political beliefs?

For background: I am currently the Paul J. Kellner Professor of Law at Columbia Law School. For the past twenty years, my scholarship has focused on criminal procedure and federal criminal enforcement issues. I teach courses in Criminal Procedure, Evidence, Federal Criminal Law, and a Sentencing seminar. Before entering academia, I served as an assistant U.S. Attorney in the Southern District of New York, and ultimately was the Chief Appellate Attorney in that Office. Since leaving
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government service in 1992, I have served as a consultant for various federal agencies, including the Justice Department's Office of the Inspector General, and I have been retained as defense counsel or a consultant in a number of criminal and civil matters.

You have posed these questions with respect to a specific Justice Department employee who, according to publically available FEC data, donated amounts totaling \$4250 to political campaign funds related to the Democratic Party and Barack Obama in 2004, and \$2000 to funds relating to President Obama in 2012. Any claim that these contributions, in of themselves, create a conflict of interest or should be cause for disqualification for a career prosecutor investigating allegations of political targeting in the Executive Branch strikes me as meritless.

28 CFR 45.2 is bars an employee from participating "in a criminal investigation or prosecution if he has a personal or political relationship with:

- (1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or
- (2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

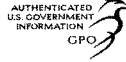
And it goes on to define a "political relationship" as

a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof

Simple past campaign contributions do not come close to meeting this standard. Indeed, were they to do so, the conflict concerns would extend as much to employees who had donated to the party out of office, since presumably that party would be gain from any findings of impropriety by the current Administration. It would similarly be highly inappropriate for Justice Department officials, in putting an investigative team together to inquire into the legal political contributions that line prosecutors have made in their private capacity. In my experience, one of the glories of the Justice Department – worthy of celebration, not undermining – is the non-partisan way in which line prosecutors have done their work as Administrations come and go. The last thing we want is to divide them into political affinity groups.

Very truly yours,

Daniel Richman



Department of Justice

§ 45.3

executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

[61 FR 59815, Nov. 25, 1996]

§ 45.2 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:

(1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and

(2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section:

(1) *Political relationship* means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and

(2) *Personal relationship* means a close and substantial connection of the type

normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.

(d) This section pertains to agency management and is not intended to create rights enforceable by private individuals or organizations.

[Order No. 992-83, 48 FR 2319, Jan. 19, 1983. Redesignated at 61 FR 59815, Nov. 25, 1996]

§ 45.3 Disciplinary proceedings under 18 U.S.C. 207(j).

(a) Upon a determination by the Assistant Attorney General in charge of the Criminal Division (Assistant Attorney General), after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Justice (former departmental employee) has violated 18 U.S.C. 207 (a), (b) or (c), the Assistant Attorney General shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending in the Department of Justice, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former departmental employee to prepare an adequate defense,

(2) Notification of the right to a hearing, and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former departmental employee who submits an answer to the notice to show cause does not request a hearing or if the Assistant Attorney General does not receive an answer

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Congress of the United States House of Representatives

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February 4, 2014

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Koskinen:

The Committee on Oversight and Government Reform is conducting oversight of the Internal Revenue Service's inappropriate treatment of tax-exempt applicants. The Obama Administration recently issued a proposed regulation limiting political speech by certain nonprofit organizations. The Committee's ongoing investigation has identified several procedural and substantive concerns with the Administration's proposed regulation. We write to request that the IRS withdraw the rule from consideration and that you provide the Committee with information about the process by which this rule was crafted.

On November 29, 2013, the IRS issued a proposed regulation related to political speech by organizations exempt from tax under Internal Revenue Code ("I.R.C.") §501(c)(4). The proposed regulation is intended to clarify the tax-exemption determinations process and resolve problems identified in a Treasury Inspector General for Tax Administration (TIGTA) audit report.¹ It does not. As written, the Administration's proposed rule will stifle the speech of social welfare organizations and will codify and systematize targeting of organizations whose views are at odds with those of the Administration. In addition to these substantive concerns, we also have serious concerns about the process by which the Administration promulgated this rule. Our concerns are discussed in this letter.

I. The proposed rule codifies the Obama Administration's earlier attempts to stifle political speech

The Administration's proposal to restrict political speech by § 501(c)(4) nonprofits must be understood in context. As the Committee's investigation has shown, beginning in 2010, the

¹ Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535 (proposed Nov. 29, 2013) (to be codified at 26 C.F.R. pt. 1) (quoting the "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action" report) [hereinafter "Proposed Regulation"].

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Administration “orchestrated a sustained public relations campaign seeking to delegitimize the lawful political activity of conservative tax-exempt organizations and to suppress these groups’ right to assemble and speak.”²

In the wake of the Supreme Court’s *Citizens United* opinion, the President and Democratic allies in Congress loudly bemoaned the lawful political speech of nonprofit groups. During his 2010 State of the Union address, the President declared:

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections. I don’t think American elections should be bankrolled by America’s most powerful interests, or worse, by foreign entities.³

As the 2010 midterm election neared, the President’s rhetoric amplified. “[A]s an election approaches,” the President proclaimed in September 2010, “it’s not just a theory. We can see for ourselves how destructive to our democracy this can become. We see it in the flood of deceptive attack ads sponsored by special interests using front groups with misleading names.”⁴ Singling out the conservative group Americans for Prosperity by name, the President expounded in October 2010: “[Y]ou have these innocuous-sounding names, and we don’t know where this money is coming from. I think that is a problem for our democracy. And it’s a direct result of a Supreme Court decision that said they didn’t have to disclose who their donors are.”⁵

For months, the Administration denounced the rights of these groups to engage in anonymous political speech and baselessly suggested that they were funded by malevolent special interest and foreign entities. This public targeting was intended to shame these groups into disclosing their funding sources and scare potential donors from making otherwise lawful contributions. The proposed regulation represents the culmination of the President’s rhetorical campaign to delegitimize social welfare organizations engaged in political speech. The proposal effectively codifies the Administration’s earlier attempts to suppress political speech by nonprofit organizations.

The Committee’s investigation into the IRS’s targeting of conservative tax-exempt applicants demonstrates that the proposed rule is simply the final act of the Administration’s history of attempts to stifle political speech by conservative § 501(c)(4) organizations.

a. The proposed rule is a continuation of Lois Lerner’s efforts to curb conservative political speech

² Memorandum from Majority Staff, H. Comm. on Oversight & Gov’t Reform, to Members, H. Comm. on Oversight & Gov’t Reform, “Interim update on the Committee’s investigation of the Internal Revenue Service’s inappropriate treatment of certain tax-exempt applicants” (Sept. 17, 2013).

³ The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

⁴ The White House, Weekly Address: President Obama Castigates GOP Leadership for Blocking Fixes for the Citizens United Decision (Sept. 18, 2010).

⁵ The White House, Remarks by the President in a Youth Town Hall (Oct. 14, 2010).

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The Committee's investigation uncovered evidence that Lois Lerner, the former IRS Director of Exempt Organizations, sought to crack down on political speech by certain nonprofit groups. Lerner, who previously served as the head of enforcement at the Federal Election Commission, demonstrated a keen interest in curbing nonprofit political speech. Documents and information suggest that under her leadership, the Exempt Organizations Division considered curbing political speech as early as 2010.

In Fall 2010, as the President and Democrats in Congress publicly sought to undermine the legitimacy of conservative-oriented nonprofits engaged in political speech, Lerner told an audience about the immense political pressure on the IRS to "fix the problem" of nonprofit political speech. She stated:

What happened last year was the Supreme Court – the law kept getting chipped away, chipped away in the federal election arena. The Supreme Court dealt a huge blow, overturning a 100-year old precedent that basically corporations couldn't give directly to political campaigns. And everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it.

They want the IRS to fix the problem. The IRS laws are not set up to fix the problem: (c)(4)s can do straight political activity. They can go out and pay for an ad that says, "Vote for Joe Blow." That's something they can do as long as their primary activity is their (c)(4) activity, which is social welfare.

So everybody is screaming at us right now: 'Fix it now before the election. Can't you see how much these people are spending?' I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can't do anything right now.⁶

Within the IRS, Lerner proposed a "c4 project" to examine more closely self-declared nonprofits engaged in political speech.⁷ Lerner noted "there is a perception out there" that some 501(c)(4) groups are established only to engage in political activity.⁸ Under her leadership, the Exempt Organizations Division launched a concerted effort to measure and assess the degree of political activity by nonprofits.

By April 2013, the Exempt Organizations Division had finished an analysis of the trends in 501(c)(4) groups with indications of political activity.⁹ This document grounded the concern in *Citizens United*, stating: "Since *Citizens United* (2010) removed the limits on political

⁶ See "Lois Lerner Discusses Political Pressure on IRS in 2010," www.youtube.com (last visited Dec. 10, 2013) (transcription by Committee).

⁷ See E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghougasian, & Judith Kindell, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191031-32]

⁸ E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghougasian, & Judith Kindell, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191031]

⁹ See Internal Revenue Serv., Baseline Analysis of 501(c)(4) Form 990 Filers with Schedule C *Political Campaign and Lobbying Activities* (Apr. 15, 2013). [IRSR 195642-65]

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spending by corporations and unions, concern has arisen in the public sphere and on Capitol Hill about the potential misuse of 501(c)(4)s for political campaign activity due to their tax exempt status and the anonymity they can provide to donors.”¹⁰ It is unclear how Lerner intended to utilize this information, but other e-mails suggest she hoped to publicize the IRS’s efforts to reign in nonprofit political speech.¹¹ According to one IRS employee, “The mere fact that we are doing anything at all in this area will be huge.”¹²

The Administration’s rule can only be properly understood in this context. As such, the proposal is merely an outgrowth of multi-year effort to “fix the problem” of nonprofit political speech. By April 2013 – a month before TIGTA released its audit report – Lois Lerner’s Exempt Organizations Division already developed an analysis of political speech by tax-exempt organizations. The rule is merely the result of “everybody” – led by the President of the United States – “screaming” at the IRS to fix the perceived problem of nonprofit political speech. Accordingly, the Administration’s proposed rule should be properly understood as the final act of Lois Lerner’s tenure at the IRS.

b. The proposed rule improperly applies Federal Election Commission standards to tax-exempt organizations

According to the notice of proposed rulemaking (NPRM), “[i]n defining candidate-related political activity for purposes of section 501(c)(4), these proposed regulations draw key concepts from federal election campaign laws....”¹³ Without explanation, the IRS co-opts the FEC’s time frames for electioneering communication, a specific type of communication within federal election law, to apply to any communication referring to a candidate.¹⁴ The proposal relies more heavily on federal election law than tax statute or IRS precedential regulatory material, without explanation.¹⁵ Rather than focus on whether political speech advances “social welfare,” as required by the governing statute, the IRS is using FEC standards to improperly expand restrictions on political speech for nonprofit groups. Thus, it appears that the IRS, in advancing the proposed rule, is simply attempting to make up for the FEC’s loss of regulatory authority due to the Supreme Court’s *Citizens United* decision.

c. Lois Lerner’s background at the Federal Election Commission and her questionable communications with FEC employees provide further context for the proposed rule

Prior to her role as the Director of the IRS Exempt Organizations office, Ms. Lerner was an Associate General Counsel and Head of the Enforcement Office at the Federal Election

¹⁰ *Id.* at 3.

¹¹ See E-mail from Lois Lerner, Internal Revenue Serv., to Nancy Marks et al., Internal Revenue Serv. (Apr. 1, 2013). [IRSR 188429]

¹² E-mail from David Fish, Internal Revenue Serv., to Nancy Marks et al., Internal Revenue Serv. (Apr. 1, 2013) (emphasis added). [IRSR 188427]

¹³ Proposed Regulation, *supra* note 1.

¹⁴ Proposed Regulation, *supra* note 1.

¹⁵ See Proposed Regulation, *supra* note 1.

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Commission.¹⁶ During her tenure at the FEC, she engaged in questionable tactics to target conservative groups, often subjecting those who wanted to expand their influence in politics to heightened scrutiny.¹⁷ Not only was her political ideology evident to her FEC colleagues, she brazenly subjected conservative groups to meticulous investigations. Similar liberal groups did not receive the same scrutiny.¹⁸

Documents produced to the Committee demonstrate coordination between Lerner and the FEC. Employees from the FEC communicated with Lerner about tax-exempt groups engaged in political speech. For instance, William Powers, an FEC official in the Office of the General Counsel, e-mailed Lerner, on February 3, 2009, seeking information about the conservative nonprofit groups American Issues Project and the American Future Fund.¹⁹ Powers asked about the status of these groups' applications for tax-exempt status and the IRS review process.²⁰ In the course of the e-mail, Powers referenced prior conversations with Lerner from July of 2008 concerning the American Future Fund.²¹

The propriety of this relationship raises serious concerns. In her discussions with Mr. Powers, it appears that Ms. Lerner disclosed information protected by 26 U.S. Code § 6103 by revealing confidential information about specific taxpayers.²² Furthermore, Donald McGahn, former FEC vice chairman, characterized any FEC "dealing" with Lois Lerner as "probably out of the ordinary."²³ McGahn went on to say: "The FEC has not had a good track record with calling balls and strikes. They've been criticized for not playing fair."²⁴ Lerner's background at the FEC, combined with her recent communications with current FEC officials, provide further context for the IRS's effort that culminated in the promulgation of this proposed rule.

d. The IRS's efforts to develop new restrictions on political speech for non-profit groups, led by Lois Lerner and the IRS chief counsel's office, began long before the TIGTA audit was released

The Administration put forth the rule under the guise that it is responsive to TIGTA's recommendations concerning the evaluation of applications for tax exempt status. The

¹⁶ Eliana Johnson, *Lois Lerner at the FEC*, NAT'L REVIEW (May 23, 2013), available at <http://www.nationalreview.com/article/349181/lois-lerner-fec-eliana-johnson> (last accessed Jan. 14, 2014) [hereinafter *Lois Lerner at the FEC*].

¹⁷ *Id.*

¹⁸ *Id.*; Rebekah Metzler, *Lois Lerner: Career Gov't Employee Under Fire*, U.S. NEWS & WORLD REP. (May 30, 2013), available at <http://www.usnews.com/news/articles/2013/05/30/lois-lerner-career-government-employee-under-fire> (last accessed Jan. 14, 2014).

¹⁹ E-mail from Mr. William Powers, Office of the General Counsel, Federal Election Commission, to Ms. Lois Lerner, Director of Exempt Organizations, Internal Revenue Service, February 3, 2009.

²⁰ *Id.*

²¹ *Id.*

²² See e.g. Eliana Johnson, "E-mails Suggest Collusion Between FEC, IRS to Target Conservative Groups," *National Review* (July 31, 2013) available at <<http://www.nationalreview.com/corner/354801/e-mails-suggest-collusion-between-fec-irs-target-conservative-groups-eliana-johnson>>.

²³ Dana Bash and Alan Silverleib, "Republican says e-mails could mean FEC-IRS collusion," CNN (Aug. 6, 2013) available at <<http://www.cnn.com/2013/08/05/politics/irs-fec-controversy>>.

²⁴ *Id.*

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Committee's investigation has uncovered evidence that the Administration considered regulating § 501(c)(4) organizations well before the publication of the TIGTA audit. Indeed, according to IRS attorney Don Spellman, the Administration had quietly considered guidance on § 501(c)(4) organizations for several years. He testified:

A [C]ertainly guidance under 501(c)(4) has been under discussion for a great deal of time, including this period.

Q When you say a great deal of time, . . . how much time are you talking about?

A Well, as I said there was a guidance project back in 1969 about whether to address exclusively under 501(c)(4), and it's been on and off since then. But that was a formal guidance project that was open and closed. And then just since I have been there, you know, the topic will just come up periodically. But it's been a very active topic for the last certainly 5 years.

Q And you also said that the (c)(4) primarily standard has been an active topic on and off in the IRS but especially in the last 5 years.

A Yes.

Q What has occurred in the last 5 years to make it an active topic during that timeframe?

A Litigation.

Q And who has been actively talking about it within the IRS?

A We certainly actively discussed it within Counsel.

Q And would those discussions be driven by the IRS Chief Counsel?

A Yes.

Q And were there discussions about issuing a new General Counsel memorandum in regard to the (c)(3) – (c)(4) primarily standard in the meeting that you had [with Lerner's direct reports in the Exempt Organizations Division] in April, May 2011?

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- A There was a discussion and there was even a draft prepared of a legal memo from Counsel to Exempt Organizations on the exemption standard under 501(c)(4), and those discussions started somewhere in 2009, 2010. I don't remember the exact date.²⁵

Mr. Spellman also explained that a legal memo on the exemption standard under 501(c)(4) was approved by the IRS chief counsel's office sometime before 2012, but was not made public.²⁶

Similarly, former IRS Acting Commissioner Steve Miller testified that the IRS and the Treasury Department had considered regulations on § 501(c)(4) organizations well before May 2013. He testified:

- Q Why did you want to discuss this article [entitled "The IRS's 'Feeble' Grip on Big Political Cash"] with Ms. [Nikole] Flax and Ms. [Catherine] Barre?
- A So, I was interested in thinking about what we might be able to do into the future in the area.
- Q What do you mean by "the area"?
- A The area of what constitutes political activity for a 501(c)(4) organization. That's my recollection, anyway.
- Q And what kind of ideas did you have in mind?
- A So, there were issues around the regulation and the definition of "exclusively" as "primarily" in the regulation. And there were other things gone on. I don't even know what else. It actually was a brainstorming session, is my suspicion.
- Q Okay. But refining the regulation was one idea that you were brainstorming?
- A That had been on – that had been thought about. But I'm not sure we were brainstorming specifically on that.

- Q What were the other ideas that you brainstormed, to your recollection?

²⁵ Transcribed interview of Don Spellmann, Internal Revenue Serv., in Wash., D.C. (July 12, 2013).

²⁶ *Id.*

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A I think what could be done in terms of, if anything, in terms of a legislative disclosure rule. That's a recollection. I may be wrong on that, but that's the only other one that I can remember right now.

Q And, sir, what do you mean by "legislative disclosure rule"?

A So, under the rules – and, you know, this is a long piece. But under the rules, 501(c)(4) donors are not disclosed to the public. And there is an argument made here and elsewhere that that's a reason why money is flowing into those organizations for political purposes – for purposes of spending on politics. I'm sorry. I'll be more precise.

Q And so you wanted to implement a disclosure rule that would take away that advantage for (c)(4)s?

A Did I want to do that? No. But in terms of brainstorming things that would level the playing field between 527 organizations and 501(c)(4) organizations, that was one thing that was talked about.

Q Did you have discussions with anyone at Treasury about these ideas?

A Probably would have had them with Mark Mazur, the tax policy person. And I think I did have a discussion with him on the concept of, is there a thought about changing the disclosure rules? And we did talk about "exclusively"/"primarily" and whether it made sense to do that or not.

Q And that discussion was in this October 2012 timeframe?

A. I don't know. It would have been – it would have been probably a little later than that. It probably would have been, you know, when I was acting [commissioner]. But I'm not – again, that would have been the timeframe.²⁷

Documents obtained by the Committee confirm that the Treasury Department has 501(c)(4) regulations "on [its] radar" well before the release of the TIGTA report.²⁸ One e-mail from 2010 clearly articulated the Department's concern as being rooted in the FEC's regulatory failure:

Before Citizens United, corporations (including c4s) were limited by the FEC rules re: campaign spending and disclosure and subject to immediate FEC enforcement action. Fear of FEC enforcement in real time may have served to limit the political activities of aggressive c4s more than fear of IRS TEGE

²⁷ Transcribed interview of Steven Miller, in Wash., D.C. (Nov. 13, 2013).

²⁸ E-mail from Ruth Madrigal, Dep't of the Treasury, to Victoria Judson, Internal Revenue Serv. (June 14, 2012). [IRSR 305906]

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enforcement action Now that the FEC cannot prohibit corporations (including c4s) from making such expenditures . . . , there is some concern that aggressive c4s will be bolder and multiply, intervening in campaigns with relative impunity.²⁹

Moreover, former Acting Commissioner Miller attributed the discussions about further regulating § 501(c)(4) organizations to pressure placed on the IRS by congressional Democrats. He testified:

Q And, sir, what did you see as the problem that needed to be addressed through either a regulatory change or a legislative change?

A So I'm not sure there was a problem, right? I mean, I think we were – we had, you know, Mr. Levin complaining bitterly to us about – Senator Levin complaining bitterly about our regulation that was older than me, where we had read “exclusively” to mean “primarily” in the 501(c)(4) context. And, you know, we were being asked to take a look at that. And so we were thinking about what things could be done.³⁰

e. The proposed rule is a continuation of the IRS's malfeasance, and not a true response to TIGTA's audit recommendations

The rule is purported to be a direct response to TIGTA's audit of the IRS's targeting of conservative tax-exempt applicants,³¹ but the reality is that the Administration has used the controversy surrounding the IRS targeting as pretext to wrongly justify the need for this regulation. The notice of proposed rulemaking (NPRM) asserts that “both the public and the IRS would benefit from clearer definitions” and cites the IRS's 30-day progress report that responds to the TIGTA audit.³² The Treasury Assistant Secretary for Tax Policy, Mark Mazur confirmed that the rule was intended to be responsive to a recommendation in the TIGTA report.³³

Contrary to the Administration's assertion, TIGTA did not recommend that the IRS issue regulations narrowing the type of permissible political speech by § 501(c)(4) organizations. The report offered nine recommendations, but not one recommended a change in the term political campaign intervention.³⁴ On December 13, 2013, Russell George, the Treasury Inspector General for Tax Administration, told the Committee that the proposed rule was not responsive to any recommendation of his office's audit.³⁵

²⁹ E-mail from Ruth Madrigal, Dep't of the Treasury, to Jeffrey Van Hove, Dep't of the Treasury (Aug. 23, 2010). [OGR 11-7-13 2260]

³⁰ *Id.*

³¹ Proposed Regulation, *supra* note 1.

³² Proposed Regulation, *supra* note 1.

³³ Transcribed interview of Mark J. Mazur, Internal Revenue Serv., in Wash., D.C. (January 10, 2014).

³⁴ See Treasury Inspector Gen. for Tax Admin., *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

³⁵ Meeting with J. Russell George, TIGTA, and House Committee on Oversight and Government Reform, December 13, 2013.

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Given these circumstances, we are concerned about the stated purposes and justification for the Administration's proposed regulation. Especially in light of the close White House coordination with the IRS concerning ObamaCare, including the potential sharing of confidential taxpayer information,³⁶ we have serious reservations about the integrity and transparency of the rulemaking process. The rule appears to be a continuation of a troubling pattern, wherein the IRS, rather than enforcing laws, carries water for the Administration's political agenda.

The rule was developed by those complicit in the targeting of the President's enemies and conceived with the intention of stifling political speech under false pretenses. The unexplainable reliance and deference to FEC definitions of political activity made applicable to social welfare organizations further calls into question the underlying motivations of the proposal. Given the facts revealed through the course of the Committee's investigation, allowing the rule to go forward can only be properly explained as the codification of the Administration's desire to stifle the activities of non-profits with which it disagrees.

II. The Administration purposefully concealed its efforts that culminated in the promulgation of the proposed rule

The Committee's investigation uncovered evidence indicating the Administration hid its efforts to curb political speech by nonprofits. Repeatedly, the Administration has failed to live up to President Obama's promise that his would be "the most transparent administration in history."³⁷ The proposed rule is yet another example of deliberate regulatory and legal subterfuge, designed to conceal unpopular and unconstitutional public policy actions. Released before the conclusion of several investigations into the multi-year political targeting campaign of conservative leaning social welfare nonprofit organizations, the proposed regulation is designed to alter a 50-year-old regulation in a manner that lacks transparency.

In June 2012, Ruth Madrigal of the Treasury Department's Office of Tax Policy wrote to several IRS leaders about potential § 501(c)(4) regulations. She wrote: **"Don't know who in your organization is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I've got my radar up and this seemed interesting."**³⁸ [emphasis added] Madrigal forwarded a short article about a court decision with "potentially major ramifications for politically active section 501(c)(4) organizations."³⁹ In her transcribed interview with Committee staff, IRS attorney Janine Cook explained how the Administration works a regulation "off-plan." She testified:

³⁶ See Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to J. Russell George, Treasury Inspector Gen. for Tax Admin. (Oct. 21, 2013).

³⁷ Jonathan Easley, "Obama says his is 'most transparent administration' ever," The Hill (Feb. 14, 2013) available at <http://thehill.com/blogs/blog-briefing-room/news/283335-obama-this-is-the-most-transparent-administration-in-history>.

³⁸ E-mail from Ruth Madrigal, Dep't of the Treasury, to Victoria Judson, Internal Revenue Serv. (June 14, 2012). [IRSR 305906]

³⁹ *Id.*

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[T]o understand the term, when it says off plan, it means working it. Working on it, but not listing it on the plan. . . . The term – I mean it's a loose term, obviously, it's a coined term, the term means the idea of spending some resources on working it, getting legal issues together, things like that, but not listing it on the published plan as an item we are working. That's what the term off plan means.⁴⁰

Not only did the IRS and Treasury develop the rule “off-plan”, but they also did not include their work on the proposed rule on the Administration’s Unified Agenda until the fall of 2013, concurrently with the release of the proposed regulation.⁴¹ The Unified Agenda is the federal government-wide report on current and future regulatory action under consideration by agencies.⁴² In summary, it is clear that the IRS and Treasury went to great lengths to prevent the public from learning about their ongoing work that culminated in the proposed rule.

III. The proposed rule is a radical deviation from any precedential guidance and completely lacks statutory authority

Nonprofit organizations “operated exclusively for the promotion of social welfare” and for which “no part of the net earnings . . . inures to the benefit of any private shareholder or individual” are entitled to tax exemption under I.R.C. §501(c)(4).⁴³ Treasury regulations promulgated in 1959 interpreted the statutory language to define “the promotion of social welfare activity.”⁴⁴ The regulations state: 1) “An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare”⁴⁵ and 2) “The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate.”⁴⁶

The Administration’s current proposal significantly broadens the exclusion of political activity well beyond any reasonable interpretation of §501(c)(4)’s statutory text. The proposed definition replaces the phrase “participation or intervention in political campaigns . . . for public office” with the much broader phrase “candidate related political activity” and a far-reaching eight point test.⁴⁷ As the NPRM states, the proposed regulation “is intended to help organizations and the IRS more readily identify activities that . . . do not promote social welfare.”⁴⁸ Paradoxically, the proposed regulation shifts the burden of proof from the presence

⁴⁰ Transcribed interview of Janine Cook, Internal Revenue Serv., in Wash., D.C. (Aug. 23, 2013).

⁴¹ Leland E. Beck, Fall 2013 *Unified Agenda Published: Something New, Something Old*, Federal Regulations Advisor (Nov. 27, 2013) available at: <http://www.fedregsadvisor.com/2013/11/27/fall-2013-unified-agenda-published-something-new-something-old/>.

⁴² *How to Read the Unified Agenda*, Center for Effective Government (last visited Jan. 13, 2013) available at: <http://www.foreffectivegov.org/node/4062>.

⁴³ I.R.C. §501(c)(4) (2013).

⁴⁴ Treas. Reg. §1.501(c)(4)-1 (as amended in 1990).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Proposed Regulation, *supra* note 1.

⁴⁸ Proposed Regulation, *supra* note 1.

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of social welfare activities to the absence of political activities. Whereas, by its plain language, the statute recognizes exemption for an organization that promotes the social welfare, the proposed regulation precludes recognition for an organization engaged in activities arbitrarily deemed to be political. The “candidate related political activity” definition focuses on types of activities that may be political, rather than types of activities that promote social welfare.

As discussed above, the Committee’s investigation uncovered a hidden agenda within the IRS – conceived “off-plan” and before the issuance of the TIGTA report – to neuter the ability of non-profits to participate in the political process and thereby engage in activities that promote their respective views of social welfare. The rule’s departure from the statutory text is the work of an overzealous and unchecked agency and must not go forward.

IV. The Proposed Rule suffers from deficient regulatory review and analysis

The proposed regulation did not undergo the standard regulatory analysis that most agency rulemakings require. Generally for significant regulatory action, like this proposed regulation, agencies must include a comprehensive cost-benefit analysis and the Office of Information and Regulatory Affairs (OIRA) engages in a thorough review of the proposed regulation before it is offered to the public for comment.⁴⁹ However, the IRS did not provide any cost-benefit analysis and the proposed regulation was never sent to OIRA for review.⁵⁰ This gap in the IRS’s regulatory process allows faulty rules like this one to reach the public without adequate analysis.

V. The Proposed Regulation will needlessly harm social welfare organizations

The result of this inadequate regulatory review is a proposed regulation that will exclude nonprofit organizations from a tax exempt status based on arbitrary and statutorily unfounded restrictions on political speech. The new definitions of “political activity” are overly broad, create an unnecessarily harsh standard for §501(c)(4) organizations, and stifle socially beneficial activities that I.R.C. §501(c) was designed to cover. Even the left-leaning Alliance of Justice, a “broad array of groups committed to progressive values,”⁵¹ believes that the Administration’s rule will chill political speech by nonprofits. It stated:

If implemented, there would be no such thing as a nonpartisan election activity conducted by a 501(c)(4); it would all be considered “political.” By expanding the definition of what activities are political, the rules would drastically reduce the ability of (c)(4)s to engage in nonpartisan get-out-the-vote drives, candidate questionnaires, and voter registration drives. These activities have been critical to

⁴⁹ Exec. Order No. 12866 (1993).

⁵⁰ See Proposed Regulation, *supra* note 1.

⁵¹ Alliance for Justice, About AFJ, <http://www.afj.org/about-afj> (last visited Jan. 30, 2014).

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the ability of nonprofits to influence the public policy debate on a wealth of issues.⁵²

a. The new definition of political activity will stifle constitutionally protected political speech

“Speech is an essential mechanism of democracy,”⁵³ but the proposed regulation redefines social welfare to exclude constitutionally protected political speech. In recognition of the “fundamental importance of the free flow of ideas and opinions on matters of public interest and concern,” the First Amendment protects the freedom of speech and freedom of association.⁵⁴ In particular, political speech is “central to the meaning and purpose of the First Amendment” and “must prevail against laws that would suppress it, whether by design or inadvertence.”⁵⁵ Through the proposed rule, the IRS is rejecting America’s “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open”⁵⁶ in favor of “more definitive rules” to “reduce the need for detailed factual analysis.”⁵⁷

Traditionally, social welfare organizations were permitted to engage in unlimited issue based advocacy and comment on the selection of executive branch officials and judicial nominees, as part of the promotion of the common good and general welfare. As examples, environmental advocacy groups have been able to comment and advocate for the removal of a conservative EPA Administrator⁵⁸ and gun rights advocacy groups have been able to speak against the nomination of anti-Second Amendment judicial appointees.⁵⁹ In a radical deviation from the “historical application” of express advocacy, the proposed rule chills speech by restricting advocacy for appointed administrators that will hold incredible power over the social and public policy issues that are fundamental to the missions of social welfare organizations.⁶⁰

The proposed rule creates a profound disincentive to engage in any constitutionally protected political speech because the mere mention of a candidate may affect the tax status of a social welfare group. Under the rule, “[a]ny public communication... within 30 days of a primary election or 60 days of a general election that refers to one or more clearly identified candidates in that election” is political activity.⁶¹ Organizations might reference the election in

⁵² Press Release, Alliance for Justice, AFJ: Treasury, IRS proposal endangers citizen participation in democracy (Nov. 27, 2013) available at <http://www.afj.org/press-room/press-releases/afj-treasury-irs-proposal-endangers-citizen-participation-in-democracy>.

⁵³ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

⁵⁴ *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988).

⁵⁵ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

⁵⁶ *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

⁵⁷ Proposed Regulation, *supra* note 1.

⁵⁸ See “Environmentalists Protest Selection of Utah Gov. Michael Leavitt at EPA Head,” *Democracy Now* (Aug. 12, 2003) available at http://www.democracynow.org/2003/8/12/environmentalists_protest_selection_of_utah_gov.

⁵⁹ See Declan McCullagh, “Gun Rights Groups are Wary of Sotomayor,” *CBS News* (May 27, 2009) available at <http://www.cbsnews.com/news/gun-rights-groups-are-wary-of-sotomayor/>.

⁶⁰ Proposed Regulation, *supra* note 1.

⁶¹ Proposed Regulation, *supra* note 1.

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a newsletter, write a blog post about the election linking to the candidates' web pages, or simply mention the activities of the incumbent elected official in a non-election related communication, but the new rule will flatly declare that these activities do not promote social welfare, thus jeopardizing the tax status of the group engaged in political speech.

b. The proposed definition will limit the public's ability to petition government officials and learn about public policy

Under the proposed rule, invitations to incumbent elected officials might turn an otherwise nonpartisan event into political activity for up to 90 days out of any election year. Members of Congress are regularly invited to speak at policy forums, community events, and many other occasions, even while serving as candidates. For example, many nonprofit groups host Tax Day events every year on April 15 and often invite Members of Congress to speak on matters of tax and fiscal policy. This rule will chill these expressive demonstrations, the purpose of which is to educate the public on the nation's fiscal state.

c. The proposed definition will curb important voter education activities

Ensuring that eligible citizens are legally able to vote on Election Day is important to our democracy. Voter registration and get-out-the-vote drives promote social welfare by encouraging citizens to participate in electing their representatives. Several IRS guidance materials have expressly permitted voter registration drives, recognizing the value to social welfare,⁶² but the proposed rule classifies voter registration drives or "get-out-the-vote" drives as political activity. The rule would thus discourage this type of behavior and have a negative effect on democracy.

In addition, voter education activities are essential to the promotion of social welfare. Many organizations that engage in voter education activity distribute information about the candidates in the form of voter guides. According to Revenue Ruling 78-248, exempt organizations may permissibly distribute voter guides,⁶³ but this new rule declares that the "[p]reparation or distribution of a voter guide that refers to one or more clearly identified candidates" is political activity.⁶⁴

Moreover, under the rule, "[h]osting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program" does not promote social welfare.⁶⁵ The rule declares that all candidate forums, all debates, and all opportunities to hear from candidates provided by any nonprofit tax exempt organization are political activity. It discourages nonprofit social welfare organizations to host important voter education events, which will be deleterious to democracy.

⁶² See Elizabeth Kingsley & John Pomeranz, *A Crash at the Crossroads: Tax and Campaign Finance Laws Collide in Regulation of Political Activities of Tax-Exempt Organization*, 31 Wm. Mitchell L. Rev. 55 (2004) and see Rev. Rul. 2007-41 (Jun. 18, 2007).

⁶³ Rev. Rul. 78-248, 1978-1 C.B. 154.

⁶⁴ Proposed Regulation, *supra* note 1.

⁶⁵ Proposed Regulation, *supra* note 1.

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Confusingly, the new definitions run counter to IRS precedence and guidance. Standards for what constitutes a permissibly apolitical voter guide have been in place for decades and are well understood.⁶⁶ Candidate forums have long been permissible and many nonprofit tax-exempt host events with candidates and elected officials to educate voters prior to an election.⁶⁷ The deviations from long standing understandings of permissible and impermissible activities are illogical and without explanation.

VI. Conclusion

The Committee is conducting a comprehensive investigation into the IRS's targeting of conservative tax-exempt applicants. Over the course of the last nine months, the Committee reviewed over 400,000 pages of documents and conducted dozens of transcribed interviews with Administration employees. Information received in the course of this investigation shows that the proposed regulation is little more than a veiled attempt to stifle the exercise of constitutionally protected speech afforded to non-profit organizations by law. Accordingly, we request that you rescind the Administration's misguided regulation.

Because of the serious concerns outlined above, the Committee has questions about the process by which the Administration developed the proposed regulation. To assist the Committee's oversight obligations, we request the IRS produce the following information, in electronic format, for the time period January 1, 2012, to the present:

1. All communications between the current or former IRS employees, including but not limited to Lois Lerner, and the Executive Office of the President including but not limited to the White House Office and the Office of Management and Budget, referring or relating to the development of the proposed regulation and any suggested amendment to Treas. Reg. §1.501(c)(4)-1.
2. All communications between the IRS and the Department of Treasury referring or relating to the development of the proposed regulation and any suggested amendment to Treas. Reg. §1.501(c)(4)-1.
3. All communications between the IRS and the FEC referring or relating to the development of the proposed regulation and any suggested amendment to Treas. Reg. §1.501(c)(4)-1.
4. All documents and communications referring or relating to the decision not to send the proposed regulation to OIRA for review.

⁶⁶ See e.g. Rev. Rul. 78-248, 1978-1 C.B. 154 and see Elizabeth Kingsley & John Pomeranz, *A Crash at the Crossroads: Tax and Campaign Finance Laws Collide in Regulation of Political Activities of Tax-Exempt Organizations*, 31 Wm. Mitchell L. Rev. 55 (2004).

⁶⁷ See Rev. Rul. 2007-41, 2007-25 I.R.B. and Rev. Rul. 86-95, 1986-2 C.B. 73.

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5. All documents and communications referring or relating to the decision to exclude this regulation from the Spring 2013 Unified Agenda and the Fall 2012 Unified Agenda.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on February 18, 2014. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Katy Rother or Tyler Grimm of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

consolidated
2/6/14

U.S. Department of Labor
Occupational Safety and Health Administration
17625 El Camino Real
Suite 400
Houston, TX 77058
Phone: 281-286-0583 Fax: 281-286-6352



Citation and Notification of Penalty

To:
Engelbrecht Manufacturing, Inc.
708 Damascus Road
Rosenberg, TX 77471

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012

Inspection Site:
708 Damascus Road
Rosenberg, TX 77471

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide *abatement certification* to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that *abatement documentation* is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

Employer Discrimination Unlawful – The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to

the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data -- You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

U.S. Department of Labor
Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 10/11/2012. The conference will be held at the OSHA office located at 17625 El Camino Real, Suite 400, Houston, TX 77058 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 525458

Company Name: Engelbrecht Manufacturing, Inc.
 Inspection Site: 708 Damascus Road, Rosenberg, TX 77471
 Issuance Date: 10/11/2012

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: U.S. Department of Labor – Occupational Safety and Health Administration, 17625 El Camino Real, Suite 400, Houston, TX 77058

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
 By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature _____

Date _____

Typed or Printed Name _____

Title _____

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.22(b)(1): Where mechanical handling equipment is used, sufficient safe clearances were not allowed for aisles, at loading docks, through doorways and wherever turns or passage were made. Aisles and passageways were not kept clear and in good repairs, with no obstruction across or in aisles that could create a hazard.

Milling machine CNC Department; the aisles in employees work area was obstructed with shaving bins, a tool cabinet, and storage containers, exposing employees to fall hazards.

Ensure aisles and passageways are kept clear with no obstruction across or in aisles that could create a hazard.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	11/10/2012
Proposed Penalty:	\$2800.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.37(b)(5): Each doorway or passage along an exit access that could be mistaken for an exit were not marked "Not an Exit" or similar designation, or be identified by a sign indicating its actual use (e.g., closet).

Mill staging area; the exit access door was not marked "not an exit", exposing employees to fire hazards.

Identify all doorways for their intended purposes.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	11/10/2012
Proposed Penalty:	\$2100.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.132(a): Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

Shipping & receiving department; the employer did not ensure that forklift operators wore a seatbelt while operating a Toyota forklift, model 7FGCU30, serial #61408, identification number 0508AP, exposing employees to struck by hazards

Ensure operators wear seatbelts while operating forklifts.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	11/10/2012
Proposed Penalty:	\$3500.00

See pages 1-through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.133(a)(1): The employer did not ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

Deburr department; the employer did not provide an employee with personal eye protection while the employee grinded metal parts, exposing the employee to contact hazards.

Ensure employees use appropriate PPE.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

11/10/2012
\$4200.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.178(l)(1)(ii): Prior to permitting an employee to operate a powered industrial truck (except for training purposes), the employer did not ensure that each operator has successfully completed the training required by this paragraph (l), except as permitted by paragraph (l)(5).

Throughout the facility; a forklift operator drove a Toyota forklift, model #7FGCU30, serial number 61408 without proper training and certification, exposing employees to struck-by hazards.

Ensure that operators are trained and certified to operate forklifts.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

11/26/2012
\$2450.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 6 Type of Violation: **Serious**

29 CFR 1910.212(a)(1): Types of guarding. One or more methods of machine guarding were not provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, in going nip points, rotating parts, flying chips and sparks. Examples of guarding methods are-barrier guards, two-hand tripping devices, electronic safety devices, etc.

a) Deburr department; Eagle Industries air grinder did not have a guard over rotating parts, exposing the employee to contact hazards.

b) Saw department; DoAll saw, model C-430A, serial #546-05157 did not have a guard over the band saw blade, exposing employees to struck-by hazards.

Ensure that all machines are guarded to protect the operator from hazards created by point of operation, in going nip points, rotating parts, flying chips and sparks.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

11/10/2012

Proposed Penalty:

\$2800.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 7 Type of Violation: **Serious**

29 CFR 1910.212(b): Anchoring fixed machinery. Machines designed for a fixed location were not securely anchored to prevent walking or moving.

Milling machine area; a machinist operated the Bridgeport Milling machine, Model #2J137681 & J278374 that was not anchored to the floor, exposing employees struck-by hazards.

Anchor all fixed machinery that is designed for a fixed location.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

11/10/2012
\$2800.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 8 Type of Violation: **Serious**

29 CFR 1910.305(g)(1)(iv)(A): Wiring methods, components, and equipment plugged into relocatable power taps were used as a substitute for the fixed wiring of a structure; general use.

Debur department; Workers plugged a hand held Eagle Industries air grinder, DeWalt sander, Twister Speed lathe, a cell phone, radio and extension cords into relocatable power taps, used in lieu of fixed wiring, exposing employees to electrical hazards.

Ensure that relocatable power taps are not used as a substitute for fixed wiring of a structure.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

11/10/2012
\$2100.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 9 a Type of Violation: **Serious**

29 CFR 1910.1200(f)(5)(i): The employer did not ensure that each container of hazardous chemicals in the workplace was labeled, tagged or marked with the identity of the hazardous chemical(s) contained therein:

- a) Lathe department; 5 gallon containers did not contain an identity label of hazardous chemical in which it contained, exposing employees to skin contact hazards.
- b) Storage area, adjacent to the stairs; 5 gallon containers and 55 gallon drums did not contain an identity label of hazardous chemical in which it contained, exposing employees to skin contact hazards.

Ensure all containers and 55 gallon drums contain an identity label of hazardous chemicals in which it contain.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	11/10/2012
Proposed Penalty:	\$2100.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 525458
Inspection Date(s): 07/10/2012 - 07/11/2012
Issuance Date: 10/11/2012



Citation and Notification of Penalty

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471

Citation 1 Item 9 b Type of Violation: **Serious**

29 CFR 1910.1200(f)(5)(ii): Appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.

a) Lathe department; 5 gallon containers did not contain an warning label of hazardous chemical in which it contained, exposing employees to skin contact hazards.

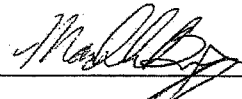
b) Storage area, adjacent to the stairs; 5 gallon containers and 55 gallon drums did not contain a warning label of hazardous chemical in which it contained, exposing employees to skin contact hazards.

Ensure all containers and 55 gallon drums contain a warning label of hazardous chemicals in which it contain.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

11/10/2012


Mark R. Briggs
Area Director

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration
17625 El Camino Real
Suite 400
Houston, TX 77058
Phone: 281-286-0583 Fax: 281-286-6352



INVOICE /
DEBT COLLECTION NOTICE

Company Name: Engelbrecht Manufacturing, Inc.
Inspection Site: 708 Damascus Road, Rosenberg, TX 77471
Issuance Date: 10/11/2012

Summary of Penalties for Inspection Number	525458
Citation 1, Serious	\$24850.00
TOTAL PROPOSED PENALTIES	\$24850.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.


If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.


Mark R. Briggs
Area Director

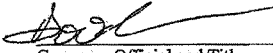

Date


IN THE MATTER OF: Engelbrecht Manufacturing, Inc.
 OSHA INSPECTION # 525458
 ISSUED: 10/11/2012

EXPEDITED INFORMAL SETTLEMENT AGREEMENT

The undersigned EMPLOYER and the undersigned Occupational Safety and Health Administration, (OSHA), in settlement of the above referenced Citation(s) and Notification(s) of Penalty which were issued on 10/11/2012, hereby agree as follows:

1. The EMPLOYER agrees to correct the violations as cited in the above referenced citations.
2. The EMPLOYER agrees to provide evidence of the actions taken to correct the cited violations.
3. Upon correction of all violations, the EMPLOYER agrees to provide written certification to the Area Director that all of the violations have been corrected. The EMPLOYER agrees to post a copy of the written certification for a period of three days in the place the citations were posted as described in paragraph 6 of this AGREEMENT.
4. OSHA agrees that the total penalty is amended to \$14,910.00. Failure of the EMPLOYER to comply with the terms of this AGREEMENT shall cause the penalty to revert to the initially proposed penalty of \$24,850.00.
5. In consideration of the foregoing amendments and/or modifications to the citations, the EMPLOYER hereby waives its right to contest said citations pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970. It is understood and agreed by the Occupational Safety and Health Administration and the EMPLOYER that the citations as amended and/or modified by this agreement shall be deemed a final order not subject to review by any court or agency.
6. The EMPLOYER agrees to immediately post a copy of this Settlement Agreement in the same manner and place as the Citations (Citations are required by law to be posted in a prominent place at or near the location of the violations). Citations must remain posted until the violations cited have been corrected, or for three working days (excluding weekends and Federal Holidays, whichever is longer.)
7. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.


 Company Official and Title
General Manager
K. Eric Goodman
10/31/12
 Dated Signed


 Mark R. Briggs,
 Area Director
11/8/12
 Dated Signed



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D.C. 20535

December 31, 2013

Honorable Darrell Issa
 Chairman
 House Committee on Oversight
 and Government Reform
 U. S. House of Representatives
 Washington, DC 20515

Honorable Jim Jordan
 Chairman
 Subcommittee on Economic Growth,
 Job Creation and Regulatory Affairs
 House Committee on Oversight
 and Government Reform
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Issa and Chairman Jordan:

This is in response to your December 2, 2013 letter related to the Committee's requests for "[a]ll documents and communications" concerning the FBI's ongoing investigation into the alleged IRS targeting of tax-exempt groups. Your December 2nd letter also requested information about the FBI's contacts with Catherine Engelbrecht, President of True the Vote and additional information related to our prior responses to certain Committee requests. This letter shall discuss each request in turn.

1. Requests for "All Documents and Communications" Relating to the Ongoing Criminal Investigation into Alleged IRS Targeting of Tax Exempt Groups

In your letters dated December 2nd and previously on September 6, 2013, the Committee wrote to the FBI requesting a broad range of documents from our investigative files. Specifically, in its September 6th letter, the Committee requested:

1. All documents and communications referring to the Internal Revenue Service's processing or evaluation of applicants for tax-exempt status from January 1, 2010.
2. All documents and communications referring to or related to the Tea Party or groups affiliated with the Tea Party movement from January 1, 2010, to the present.

Chairman Issa and Chairman Jordan

3. All documents and communications referring to or relating to the FBI's investigation into the IRS's mistreatment of groups applying for tax exempt status from the IRS from May 10, 2013 to the present.

In your December 2nd letter, the Committee reiterated these same requests for documents and communications.

This broad request for documents and communications encompasses the entire criminal investigative file and all communications relating to the ongoing criminal investigation into alleged IRS targeting of tax exempt groups. In fact, as noted in our letter to the Committee on October 31, 2013, "the documents you have requested are evidence in an ongoing investigation and cannot be released at this time." It is important that the investigators be permitted to conduct their investigation in a fair and impartial manner and use any documents or communications obtained to conduct interviews and to obtain additional evidence in order to pursue all the facts in the case. Maintaining the integrity of an ongoing criminal investigation has been a longstanding policy of the Department of Justice, and requests to disclose all documents and communications from an investigative file are generally deferred until the investigation has concluded. The Committee acknowledged in its December 2nd letter that the FBI has an interest in protecting the ongoing criminal investigation, and we would request that the Committee permit the investigators to complete their investigation and consult with federal prosecutors, as appropriate, to determine whether the evidence reveals a prosecutable violation of any statutes within our jurisdiction. As a result, we cannot provide the documents requested at this time while the criminal investigation is active and ongoing.

2. Request for Information Related to Catherine Engelbrecht, President of True the Vote

In your December 2nd letter, you wrote that "in our letter [referring to the September 6th letter], we also requested information about the FBI's contacts with Catherine Engelbrecht, President of True the Vote." The September 6th letter, however, does not refer to Catherine Engelbrecht or True the Vote, nor does the letter ask any questions of the FBI (the letter only makes document requests quoted above). As such, it is not clear what specific request the Committee is referring to in the December 2nd letter.

The September 6th letter did include a paragraph expressing concern about allegations that "a Tea Party group," known as "the King Street Patriots," was contacted by the FBI and other federal agencies. The September 6th letter also acknowledged that the FBI had previously provided information to the Judiciary Committee in response to questions about contacts with the King Street Patriots. To be clear, the September 6th letter did not ask any questions about these contacts; it only expressed concern about them. To the extent the Committee wants to know about the FBI's contacts with the King Street Patriots (or to the extent Catherine Engelbrecht or True the Vote is related to the King Street Patriots), we provide you with the following information that was previously provided to staff for Congressman Jordan in August 2013.

Chairman Issa and Chairman Jordan

In 2010, the FBI received a complaint that a named individual stated he wanted to start a revolution against a number of groups, to include the U.S. Government, and had visited a firing range. The complainant also advised that the named individual was a member of the King Street Patriots. In response to the complaint, the FBI contacted the King Street Patriots who stated that the individual had attended a training session but was asked to leave that meeting. At that time, King Street Patriots offered an address for this individual which later turned out to be fictitious. The individual was eventually located, interviewed, and indicated that his remarks were made in jest. The King Street Patriots were questioned concerning their limited relationship with the individual in question, not concerning their tax status or in relation to the investigation of alleged IRS activities. We do not have any record of interviewing Catherine Engelbrecht related to this matter.

3. Request for Information Related to Communications Between DOJ and FBI
Related to the Committee's September 6th Letter to the FBI

In your December 2nd letter, you request "all documents and communications between or among FBI and DOJ employees referring to or relating to the Committee's letter request of September 6, 2013." In this regard, a draft of the FBI's response letter was provided to the Justice Department Office of Legislative Affairs for review, consistent with standard practice, prior to its submission to the Committee. The letter was corrected for style and one factual error (the letter was corrected to refer to two DOJ divisions rather than one in the second full paragraph), but was not otherwise edited by the Department. In addition, the Committee has requested documents and communications referring to or relating to any potential meetings involving Valerie Parlave, any potential briefings for Committee Members or staff, and the telephonic conversations between FBI employees and Committee staff on November 12, 18, and 20, 2013. Consistent with standard practice, we notified Department staff about our communications with your staff and then communicated the FBI's position to your staff.

In providing this information, the FBI strives to comply with Congressional requests for information to the fullest extent consistent with our constitutional and statutory obligations. We appreciate the Committee's continued support of the FBI and its mission. I hope this information proves helpful and should you have questions concerning this or other matters, please contact the FBI's Office of Congressional Affairs at (202) 324-5051.

Sincerely,


Stephen D. Kelly
Assistant Director
Office of Congressional Affairs

Chairman Issa and Chairman Jordan

- 1 - Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515
- 2 - Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515
- 3 - Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515
- 4 - Honorable Matthew Cartwright
Ranking Member
Subcommittee on Economic Growth, Job Creation
and Regulatory Affairs
U.S. House of Representatives
Washington, DC 20515

TOTAL P.05

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
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<http://oversight.house.gov>

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MICHELLE LUJAN GRISHAM, NEW MEXICO

February 6, 2014

Board of the Office of Congressional Ethics
U.S. House of Representatives
425 3rd Street, S.W., Suite 1110
Washington, D.C. 20024

Dear Members of the Board:

In written testimony submitted to the Committee on Oversight and Government Reform's Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, two witnesses report that a complaint has been, or is in the process of being, filed today against me for conducting an investigation relating to voter integrity issues. I am writing to provide the Board with information about my investigation.

Catherine Engelbrecht, the founder and president of an organization known as True the Vote, explained this complaint in written testimony submitted for a hearing today before the Subcommittee:

Shortly after filing IRS forms to establish 501(c)(3) and 501(c)(4) tax-exempt organizations, an assortment of federal entities—including law enforcement agencies and a Congressman from Maryland, Elijah Cummings—came knocking at my door. ... I also refuse to let a precedent be set that allows Members of Congress, particularly the Ranking Member of the House Oversight and Government Reform Committee, to misrepresent this governing body in an effort to demonize and intimidate citizens. Three times, Representative Elijah Cummings sent letters to True the Vote, demanding much of the same information that the IRS had requested. Hours after sending letters, he would appear on cable news and publicly defame me and my organization. Such tactics are unacceptable. It is for these reasons that immediately after this hearing I am filing a formal complaint with the House Office of Congressional Ethics and asking for a full investigation.¹

¹ Statement of Catherine Engelbrecht, Founder and President of True the Vote, *Hearing on "The IRS Targeting Investigation: What is the Administration Doing?"*, Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, House Committee on Oversight and Government Reform (Feb. 6, 2014).

Board of the Office of Congressional Ethics
Page 2

Cleta Mitchell, Ms. Engelbrecht's attorney and also a witness before the Subcommittee today, similarly referred to:

the complaint that Catherine Engelbrecht has filed today with the Office of Congressional Ethics—asking OCE to determine whether Rep. Elijah Cummings has violated the rules of the House of Representatives and, indeed, federal law by his pursuit of his sole inquiry against True the Vote, misrepresenting that it was the work of a House committee when it was not—and whether Rep. Cummings or his staff were in any way involved in the abuse of Catherine Engelbrecht and her family by the federal government.²

Although I have not been provided with a copy of this complaint, I am enclosing for the Board's review copies of the following five letters exchanged between me and Ms. Engelbrecht and her counsel in 2012:

- Letter from Ranking Member Cummings to Ms. Engelbrecht (Oct. 4, 2012):
Requesting documents relating to allegations that True the Vote and its affiliated organizations challenged the registration of thousands of legitimate voters based on insufficient, inaccurate, and faulty evidence.
- Letter from Ms. Engelbrecht to Ranking Member Cummings (Oct. 5, 2012):
Declining to provide the requested documents and offering to meet in Washington D.C.
- Letter from Ranking Member Cummings to Ms. Engelbrecht (Oct. 18, 2012):
Accepting the offer to meet after the requested documents were produced, and requesting additional documents relating to True the Vote's plan to deploy hundreds of thousands of personnel on Election Day to challenge access to the polls for people the organization believed should not be allowed to vote.
- Letter from Brook Akers, Counsel to Ms. Engelbrecht, to Ranking Member Cummings (Oct. 29, 2012): Declining again to provide any of the requested documents and renewing the offer to meet in Washington, D.C.
- Letter from Ranking Member Cummings to Ms. Engelbrecht (Dec. 20, 2012):
Accepting the offer to meet, proposing a date of January 16, 2013, and again requesting documents (the meeting never occurred, and no documents were ever produced).

As you will note, I signed three letters to Ms. Engelbrecht on October 4, October 18, and December 20, 2012, in my capacity as Ranking Member of the Committee, a position I have held since 2011. Ms. Engelbrecht's response letter on October 5, 2012, acknowledged this fact and

² Statement of Cleta Mitchell, Counsel to Catherine Engelbrecht, Founder and President of True the Vote, *Hearing on "The IRS Targeting Investigation: What is the Administration Doing?"*, Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, House Committee on Oversight and Government Reform (Feb. 6, 2014).

Board of the Office of Congressional Ethics

Page 3

referred to me explicitly as "an esteemed Ranking Member of the House Committee on Oversight and Government Reform."

Although there is no requirement to do so, I provided courtesy copies of my letters to the Committee Chairman, Rep. Darrell Issa. In addition, my letters were extensively footnoted to provide sources for information they contain. They are also posted on the Democratic Committee website.

As I am sure you know, there is no bar on Members of Congress seeking information or requesting documents in this manner, and this is the same procedure Rep. Issa used when he served as Ranking Member of the Oversight Committee in 2009 and 2010.

My requests for documents were based not only on specific allegations of wrongdoing, but on Ms. Engelbrecht's public statements lauding transparency in our nation's voting process, as well as her attorney's statement on October 29, 2012, that: "We operate completely in the open, with anyone and everyone available to see what we do and when we do it." Unfortunately, Ms. Engelbrecht declined to provide any documents in response to my requests or to meet with me after proposing such a meeting.

If you have any additional questions, please feel free to contact my office.

Sincerely,


Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman

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October 4, 2012

Ms. Catherine Engelbrecht
Founder and President
True the Vote
P.O. Box 27378
Houston, TX 77227

Dear Ms. Engelbrecht:

I am writing to request information about the manner in which True the Vote and its affiliated organizations have been challenging the registration of thousands of legitimate voters based on insufficient, inaccurate, and faulty evidence.

According to your website, the mission of True the Vote is "to restore integrity to the American system of electing its leaders."¹ One of your key initiatives is to train volunteers to challenge the registration of voters before elections, and to provide them with information and data about voters you want to purge from the rolls.

Unfortunately, True the Vote, its volunteers, and its affiliated groups have a horrendous record of filing inaccurate voter registration challenges, causing legitimate voters—through no fault of their own—to receive letters from local election officials notifying them that their registrations have been challenged and requiring them to take steps to remedy false accusations against them.

Multiple reviews by state and local government officials have documented voter registration challenges submitted by your volunteers based on insufficient evidence, outdated or inaccurate data, and faulty software and database capabilities. Across multiple states, government officials of both political parties have criticized your methods and work product for their lack of accuracy and reliability.

Your tactics have been so problematic that even Ohio Republican Secretary of State Jon Husted has condemned them as potentially illegal, stating:

¹ True the Vote, *Mission Statement* (online at www.truethevote.org/about/).

Ms. Catherine Engelbrecht
Page 2

When you cry wolf, and there's no wolf, you undermine your credibility, and you have unjustly inconvenienced a legally registered voter, and that can border on voter intimidation.²

Some have suggested that your true goal is not voter integrity, but voter suppression against thousands of legitimate voters who traditionally vote for Democratic candidates. In June, for example, you appeared at a Conservative Political Action Conference in Chicago that was organized to take "the fight for the future of America directly to President Obama's backyard" and "energize and mobilize Midwestern conservatives, giving activists the tools needed to defeat the liberal agenda in 2012."³ During your appearance at this conference, you claimed that the Obama Administration is "determined to force a radical agenda on us"; you accused the Administration of a stunning "assault on our elections"; and when asked if you are working to get a new "administration in there," you responded "Absolutely."⁴

At some point, an effort to challenge voter registrations by the thousands without any legitimate basis may be evidence of illegal voter suppression. If these efforts are intentional, politically-motivated, and widespread across multiple states, they could amount to a criminal conspiracy to deny legitimate voters their constitutional rights.

In order to investigate these serious allegations, I request that you provide information about the data you have been using to challenge voter registrations, the training you have been providing volunteers to conduct these activities, and the manner in which you have been determining where to deploy your resources in select jurisdictions. Given your multiple statements lauding transparency in our nation's voting process, I trust you will provide the requested information as soon as possible.

Inaccurate Voter Challenges in Ohio

There have been numerous reports of inaccurate voter registration challenges by volunteers at the Ohio Voter Integrity Project, a project "empowered" by True the Vote. For example, as the Los Angeles Times reported:

² *Tea Party Groups Work to Remove Names from Ohio Voter Rolls*, Los Angeles Times (Sept. 26, 2012) (online at www.latimes.com/news/nationworld/nation/la-na-ohio-voting-fight-20120927,0,811761.story).

³ *CPAC Chicago Conference*, Meetup.com (www.meetup.com/The-9-12-Project-Chicago/events/61409942/) (accessed Oct. 3, 2012).

⁴ *NRA News Interview with Catherine Engelbrecht, President of True the Vote*, CPAC Conference-Chicago (June 8, 2012) (online at www.youtube.com/watch?v=6ahohiaY15x0).

Ms. Catherine Engelbrecht
Page 3

In Ohio, election records show, one of the project's top priorities has been to remove college students from the voter rolls for failure to specify dorm room numbers. (As a group, college students are strongly in Obama's camp.)

Voters challenged include 284 students at the Ohio State University campus in Columbus, 110 at Oberlin College, 88 at College of Wooster, 38 at Kent State—and dozens more from the University of Cincinnati, Miami University, Lake Erie College, Walsh University, Hiram College, John Carroll University and Telshe Yeshiva, a rabbinical college near Cleveland.⁵

According to the Times report, "So far, every county election board that has reviewed the dorm challenges found them invalid."⁶

Many of these faulty registration challenges have been attributed to poor research methods and inaccurate information. For example, Mary Siegel, a leader of the Ohio Voter Integrity Project, reportedly signed 422 "Challenge of Right of Person to Vote" forms based on a Postal Service change-of-address registry and submitted them to the Hamilton County elections board. She withdrew the challenges after the state declared the postal registry to be insufficient grounds to challenge voting rights.⁷ According to Ms. Siegel, the Ohio Voter Integrity Project challenged voter registrations in 13 counties in Ohio, nine of which President Obama won in 2008.⁸

Another leader of the Ohio project, Marlene Hess Kocher, reportedly filed 420 challenges in Hamilton County over the last month. These included false allegations that eight members of an African American family were registered to vote at a vacant lot outside Cincinnati. When confronted at an elections board hearing about these illegitimate challenges, Ms. Kocher publicly apologized and claimed that she had "no intention of preventing somebody from voting."⁹

In spite of this deplorable record, you personally commended the work of the Ohio Voter Integrity Project, stating, "This is an excellent example of True the Vote-empowered grassroots groups pushing for transparency and accountability from their local officials."¹⁰

⁵ *Tea Party Groups Work to Remove Names from Ohio Voter Rolls*, Los Angeles Times (Sept. 26, 2012).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ True the Vote, *Ohio Voter Integrity Project, Empowered by True the Vote, Challenges Voter Registrations in 13 Ohio Counties* (Sept. 12, 2012) (online at

Ms. Catherine Engelbrecht
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Inaccurate Voter Challenges in Wisconsin

Problems with the tactics and methodologies employed by your organization were also identified in Wisconsin when a True the Vote affiliate known as Verify the Recall reviewed almost one million signatures on petitions demanding the recall of Governor Scott Walker. The New York Times reported that “thousands of volunteers helped enter petition signatures into a database, which was then analyzed by the group’s software.”¹¹

According to the Times, however, a non-partisan state regulatory agency consisting of six former state judge appointees known as the Government Accountability Board reviewed True the Vote’s work and “criticized its methods” for basic errors:

For example: Mary Lee Smith signed her name Mary L. Smith and was deemed ineligible by the group.

Signatures deemed “out of state” included 13 from Milwaukee and three from Madison.

The group’s software would not recognize abbreviations, so Wisconsin addresses like Stevens Point were flagged if “Pt.” was used on the petition.¹²

In a memorandum evaluating True the Vote’s poor record in Wisconsin, the Government Accountability Board concluded that your organization’s results “were significantly less accurate, complete and reliable than the review and analysis completed by the G.A.B.” and “would not have survived legal challenge.”¹³

The Government Accountability Board also found that software developed by True the Vote was flawed, writing:

It is staff’s conclusion that True the Vote’s results are at best flawed because of what must be described as a “strict compliance” standard coupled with a model that allows errors to be multiplied via the volunteer data entry. These errors led to many computer

www.truethevote.org/news/ohio-voter-integrity-project-empowered-by-true-the-vote-challenges-voter-registrations-in-13-ohio-counties).

¹¹ *Looking, Very Closely, for Voter Fraud*, New York Times (Sept. 16, 2012) (online at www.nytimes.com/2012/09/17/us/politics/groups-like-true-the-vote-are-looking-very-closely-for-voter-fraud.html?pagewanted=all).

¹² *Id.*

¹³ *A Reading Guide to True the Vote—The Controversial Voter Fraud Watchdog*, Pro Publica (Sept. 27, 2012) (online at www.propublica.org/article/a-reading-guide-to-true-the-vote-the-controversial-voter-fraud-watchdog).

Ms. Catherine Engelbrecht
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determined strikes as the software can only evaluate the information entered, so if it was flawed or incomplete there was no opportunity for determining validity under a substantial compliance standard.¹⁴

Similar Problems in Other States

The problems documented in Ohio and Wisconsin are similar to those identified in other states. For example, in North Carolina, Jay DeLancy, who runs the Voter Integrity Project of North Carolina, a group he started after attending a True to Vote meeting, told the New York Times that the group recently submitted the names of 30,000 people he claimed were dead, yet remained on state voter rolls. The Times also reported that he challenged more than 500 registered voters he claimed were not American citizens. After reviewing these challenges, North Carolina election officials refuted nearly all of them.¹⁵

Moreover, North Carolina's Director of Voter Registration and Absentee Voting publicly criticized True the Vote's challenges, stating:

People are concerned about voter fraud, but ... we are not finding evidence of (such fraud). The Voter Integrity Project has not brought forth any information to show that someone is voting in the name of another, and I think citizens in North Carolina need to be aware of that.¹⁶

Similarly, Election Integrity Maryland, another statewide initiative "empowered" by True the Vote, reportedly filed 11,000 challenges this year with local Maryland election boards.¹⁷ Among these challenges, the group filed a request to review registration records with the Maryland Board of Elections on August 30, 2012, alleging that "it found several potential dead

¹⁴ Government Accountability Board, *Verify the Recall / True the Vote Recall Petition Analysis* (May 15, 2012) (online at www.documentcloud.org/documents/439357-wisconsin-gab-true-the-vote-analysis.html#document/p27/a74485).

¹⁵ *Looking, Very Closely, for Voter Fraud*, New York Times (Sept. 16, 2012) (online at www.nytimes.com/2012/09/17/us/politics/groups-like-true-the-vote-are-looking-very-closely-for-voter-fraud.html?pagewanted=all).

¹⁶ *Voter ID Fights Continue in Presidential Battleground States*, Kansas City.com (Sept. 24, 2012) (online at www.kansascity.com/2012/09/24/3830940/voter-id-fights-continue-in-presidential.html#storylink=cpy).

¹⁷ *Dead People Voted and Registered to Vote, Watchdog Group Finds; Hundreds of Deceased Still on Rolls*, MarylandReporter.com (Sept. 30, 2012) (online at www.marylandreporter.com/2012/09/30/dead-people-voted-and-registered-to-vote-watchdog-group-finds-hundreds-of-deceased-still-on-the-rolls/#ixzz289OgTqtz).

Ms. Catherine Engelbrecht
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voters, voters who registered after they had died and a living Maryland resident who has been voting twice in elections for years.”¹⁸

Maryland’s Director of Voter Registration has reported to Committee staff that, after investigating claims in the article, information provided by the organization “was determined to be inaccurate.” Another state election official also reported that one of the Leaders of Election Integrity Maryland recently called the Board of Elections to apologize for inaccurate press reports that the group believes mischaracterized its voter registration challenges.¹⁹

Local and state election officials in Maryland have also “questioned some of the research methods used by Election Integrity such as newspaper obituary notices, which is an unacceptable form of death verification under state law, and Facebook.”²⁰ In addition, Maryland election officials report that “they’ve reviewed the challenges and that most of the inconsistencies can be explained, or that they don’t have enough information to take someone off the rolls.”²¹ With respect to the volume of voter registration challenges submitted by the group, Maryland election officials “say those numbers are way overblown.”²²

Request for Documents and Information

In order to examine why your organization appears to be responsible for so many illegitimate voter registration challenges, I request that you provide the following information and documents:

- (1) a list of all individual voter registration challenges by state, county, and precinct submitted to governmental election entities, including correspondence and determinations by election officials relating to each challenge;

¹⁸ *Id.*

¹⁹ Telephone Call with Deputy State Administrator and Director of Voter Registration, Maryland State Board of Elections, and Democratic Staff, House Committee on Oversight and Government Reform (Oct. 4, 2012).

²⁰ *Dead People Voted and Registered to Vote, Watchdog Group Finds; Hundreds of Deceased Still on Rolls*, MarylandReporter.com (Sept. 30, 2012).

²¹ *Tea Party Spawns New Effort Against Voter Fraud*, National Public Radio (Mar. 13, 2012) (online at www.npr.org/2012/03/13/148518795/tea-party-spawns-new-effort-against-voter-fraud).

²² *Id.*

Ms. Catherine Engelbrecht
Page 7

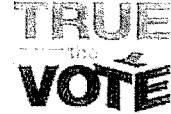
- (2) copies of all letters sent to states, counties, or other entities alleging non-compliance with the National Voter Registration Act for failing to conduct voter registration list maintenance prior to the November elections;
- (3) a list of voter registration rolls by state, county, and precinct that True the Vote is currently reviewing for potential challenges;
- (4) copies of all training materials used for volunteers, affiliates, or other entities;
- (5) copies of computer programs, research software, and databases used by True the Vote to review voter registration;
- (6) all contracts, agreements, and memoranda of understanding between True the Vote and affiliates or other entities relating to the terms of use of True the Vote research software and databases;
- (7) a list all organizations and volunteer groups that currently have access to True the Vote computer programs, research software, and databases; and
- (8) a list of vendors of voter information, voter registration lists, and other databases used by True the Vote, its volunteers, and its affiliates.

Please provide these documents by October 14, 2012. Thank you for your attention to this matter.

Sincerely,


Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman



VIA EMAIL

October 5, 2012

The Honorable Elijah E. Cummings
United States House of Representatives
2471 Rayburn House Office Building
Washington, D.C., 20510

Dear Representative Cummings:

I am writing to request a meeting with you to discuss True The Vote, a national, nonpartisan organization I founded for the purpose of protecting the integrity of our electoral process.

As stated in a letter dated October 1 to your colleague Senator Barbara Boxer, I believe we agree on many common goals, such as the right of every American to have the opportunity to participate in a fair and legal electoral process. It was of great concern to me that you had suddenly requested a considerable amount of documentation on the basis of news reports which offered limited balance and an over-simplification of the facts. I find it regrettable that your office did not reach out to True The Vote directly before launching a personal ad-hoc investigation.

Election integrity is a serious concern across the nation – the state of Maryland is no exception. In this year alone, as reported by The Washington Post, a federal congressional candidate seeking to join Maryland's Congressional Delegation was forced to resign from her race by Democratic Party officials after alleged felony double voting was uncovered in her voting history.

This week, True The Vote turned over 99 similar cases to authorities in New York, Ohio, Florida and Rhode Island. Election Integrity Maryland, another group you criticized using second-hand knowledge, turned over two new cases of voters casting ballots subsequent to their deaths in Montgomery and Prince George's Counties.

As an esteemed Ranking Member of the House Committee on Oversight and Government Reform, it is important that you are apprised of all the facts. Your open letter dated yesterday and comments to CNN this morning demonstrate a second-hand knowledge or poor staff- researched understanding of our organization's activities.

Your critique of the Ohio Voter Integrity Project's citizen challenges could have easily been mitigated with a prior explanation of Ohio Election Code. As you may have been briefed, Ohio Election Code 3503.24 outlines the legal process for duly registered electors to challenge their local

True the Vote | 7232 Wynnwood Lane | Houston, Texas 77008

registrations based on irregularities found in the publicly available records. According to 3503.24(B), election boards have the duty to review the challenge, then either summarily grant or deny the finding. Should further investigation be required, boards are instructed to set a time for a hearing and notify those challenged in writing three (3) days prior. In some instances, local election boards did indeed summarily reject challenges without formal investigations. The cases you mention, however, required further consideration of the evidence in a formal hearing. We agree that it was unfortunate the Hamilton County Board of Elections saw fit to inconvenience fellow citizens. There could be value for your personal investigation to expand its scope into whether boards knowingly pursued challenges while in possession of more recent records.

You are most certainly aware that Section 8 of the National Voter Registration Act gives a private right of action for citizens to bring lawsuits in the event election registrars are failing to maintain the voter rolls properly. Ohio law, in fact, expressly provides for citizen challenges to registration records which appear to be in violation of Section 8.

Responsible citizens exercising powers under Section 8 have every right, and we would argue, a civil obligation, to assist the electoral process by bringing this information to the attention of election officials. To assume that the exercise of rights under federal and state law violates federal law is inaccurate, misleading, and unfair.

Further, your letter referenced second-hand criticism of our efforts to verify the validity of signatures submitted in the highly partisan recall attempt of Wisconsin Governor Scott Walker. It must be noted that the non-partisan Government Accountability Board you quote also publicly stated it had no intention to verify any signatures prior to official certification. True The Vote could not allow this precedent be set for future Wisconsin election operations. When a government entity refuses to execute its primary functions, citizens cannot allow such dereliction of duty to go unchallenged. True The Vote's efforts in the Badger State perfected our citizen verification operations and have subsequently been requested in other states across the nation.

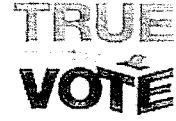
It is both obvious and unfortunate that you are not familiar with all of the details of the mission or methods of True the Vote. This letter serves as an effort to coordinate a convenient meeting time in your Washington, D.C. office, during which I can brief you and your staff about our program and help dispel any misconceptions you may have. In the interim, if you anticipate making any future comments about True the Vote, please do not hesitate to contact me directly so that I may provide you with accurate information. As always, you are welcome to join an upcoming training session before Election Day.

Sincerely,



Catherine Engelbrecht
True The Vote

True the Vote | 7232 Wynnwood Lane | Houston, Texas 77008



cc: The Honorable Darrell E. Issa
Chairman, House Committee on Oversight and Government Reform

The Honorable Ted Poe

The Honorable Lamar Smith

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October 18, 2012

Ms. Catherine Engelbrecht
Founder and President
True the Vote
P.O. Box 27378
Houston, TX 77227

Dear Ms. Engelbrecht:

On October 4, 2012, I sent you a letter requesting specific documents about the manner in which True the Vote and its affiliated organizations have been challenging the registration of thousands of legitimate voters across the country based on insufficient, inaccurate, and faulty evidence. I requested these documents by October 14, 2012.¹

To date, you have not produced a single document. Instead, you responded by claiming that my request was based on "an over-simplification of the facts" and "second-hand knowledge or poor staff-researched understanding of our organization's activities." Rather than providing any documents that would shed light on your organization's activities, you attacked election officials in Ohio and Wisconsin for not doing their jobs. Rather than providing any documents that would bring greater transparency to these efforts—a goal you claim you share—you offered only to meet with me to "dispel any misconceptions."²

I accept your offer to come to Washington to answer these allegations, but only after you provide the documents I requested. Obviously, without documents, there is no way to verify any statements you may make, including those relating to how you decide which voters to challenge, how you compile the data that you rely on for these challenges, and where you decide to deploy your resources.

¹ Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Catherine Engelbrecht, Founder and President, True the Vote (Oct. 4, 2012) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5791&Itemid=104).

² Letter from Catherine Engelbrecht, Founder and President, True the Vote, to Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform (Oct. 5, 2012).

Ms. Catherine Engelbrecht
Page 2

In addition to documents relating to your efforts to challenge legitimate voter registrations, today I am also requesting documents relating to your plan to deploy hundreds of thousands of personnel across the country on Election Day to challenge access to the polls for people you believe should not be allowed to vote.

You have stated that you “are on track to recruit and train 1 million volunteers” for poll monitoring on Election Day.³ However, there have been reports from multiple states during the past two years that your organization is targeting predominantly minority communities and coordinating with the Republican Party in an attempt to intimidate legitimate voters. In fact, your National Elections Coordinator, Bill Ouren, stated that your purpose on Election Day is to make our nation’s polling places feel “like driving down the road and looking up in that rearview mirror and seeing that there is an officer of the law following you.”⁴

Although several state laws allow private citizens to contest voter eligibility at the polls, voter intimidation is against the law.⁵ Actions that intimidate people from exercising any Constitutional right—including the right to vote—may be criminally prosecuted.⁶ As I stated in my prior letter, if these efforts are intentional, politically-motivated, and widespread across multiple states, they could amount to a criminal conspiracy to deny legitimate voters their Constitutional rights.⁷

If you are truly committed to transparency in our nation’s voting process—and if you continue to deny that your organization is challenging thousands of legitimate voters across the country for partisan political purposes—then you should have no reason to withhold documents from Congress about your activities.

³ Catherine Engelbrecht, *All Citizens Have a Stake in the Integrity of Elections*, Houston Chronicle (May 1, 2012) (online at www.chron.com/opinion/outlook/article/All-citizens-have-a-stake-in-the-integrity-of-3525938.php).

⁴ True the Vote National Summit, *Remarks by Bill Ouren, True the Vote National Elections Coordinator* (Apr. 27-28, 2012) (online at <http://vimeo.com/42865480>). See also True the Vote, *Enforcement Final* (online at <http://vimeo.com/46666083>).

⁵ 42 U.S.C. § 1973i(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.”) See also Brennan Center for Justice, *Voter Challengers* (Aug. 30, 2012) (online at brennan.3cdn.net/9edfc63808b7bf0c09_y5m6iyf3a.pdf).

⁶ 18 U.S.C. §§ 241, 242.

⁷ 42 USC § 1985(3) (including “if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote”).

Ms. Catherine Engelbrecht
Page 3

Allegations of Targeting Minority Communities in North Carolina

On October 12, 2012, the Institute for Research and Education on Human Rights issued a report concluding that True the Vote's poll monitoring efforts in North Carolina appear to be aimed at African American and other minority communities that historically have voted for Democratic candidates. According to the author, the information in the report demonstrates that your organization has a "highly partisan and political agenda to deny African Americans and Latinos, specifically, the right to vote."⁸

For example, the report found:

Of the twenty-five counties with the highest level of African American population in the state, True the Vote has volunteers in twenty-four of them. By contrast, of the ten counties with the two lowest levels of African American population (0-167 and 167-810), True the Vote has only one volunteer in two different counties.⁹

Similarly, according to the report:

True the Vote also has recruits in nine of the ten North Carolina counties with the highest Hispanic or Latino ancestry population. By contrast, True the Vote only has recruits in 4 of the twenty-five least Latino populated counties.¹⁰

Since the issuance of this report last week, it appears that you have shut down access on True the Vote's internal website to information about where you are deploying personnel. As a result, it appears that even your own volunteers are now restricted from accessing this information. If this is accurate, it raises serious questions about whether your true goal is to suppress the vote in these minority communities.

Allegations of Abusive Poll Monitoring Tactics in Wisconsin

In Wisconsin, True the Vote's aggressive poll monitoring tactics were identified during the recall election of Governor Scott Walker. As the New York Times reported:

⁸ Democracy North Carolina, *LOD: Wrong the Voter* (Oct. 13, 2012) (online at www.nc-democracy.org/2012/10/13/10d-wrong-the-voter/).

⁹ Institute for Research and Education on Human Rights, *Abridging the Vote: True the Vote in North Carolina* (Oct. 12, 2012) (online at www.irehr.org/issue-areas/tea-party-nationalism/tea-party-news-and-analysis/item/436-abridging-the-vote).

¹⁰ *Id.*

Ms. Catherine Engelbrecht
Page 4

On Election Day, poll watchers appeared to have slowed voting to a crawl at Lawrence University in Appleton, where some students were attempting to register and vote on the same day.

Charlene Peterson, the city clerk in Appleton, said three election observers, including one from True the Vote, were so disruptive that she gave them two warnings.

"They were making challenges of certain kinds and just kind of in physical contact with some of the poll workers, leaning over them, checking and looking," said John Lepinski, a poll watcher and former Democratic Party chairman for Outagamie County.

He said that as a result of the scrutiny, the line to register moved slowly. Finally, he said, some students gave up and left.¹¹

True the Vote's poll monitoring efforts appeared to be so disruptive that the state's Government Accountability Board issued the following statement in preparation for the state's primary in August:

Our system of open, transparent elections depends on members of the public serving as observers at polling places. However, in recent elections we have received disturbing reports and complaints about unacceptable, illegal behavior by observers. Voters expect a calm setting in which to exercise their right to vote.¹²

Allegations of Abusive Poll Monitoring Tactics in Texas

True the Vote also faced numerous allegations of using intimidating tactics during the 2010 election at multiple polling locations serving communities of color in Harris County, Texas.

For example, in a sworn affidavit, the Democratic nominee for the Office of Harris County Clerk in the 2010 General Election stated that many poll watchers who were volunteering under King Street Patriot's True the Vote initiative "hovered over voters and/or made disturbances and/or challenges to voters."¹³ Similarly, the Deputy Executive Director for

¹¹ *Looking, Very Closely, for Voter Fraud*, New York Times (Sept. 16, 2012) (online at www.nytimes.com/2012/09/17/us/politics/groups-like-true-the-vote-are-looking-very-closely-for-voter-fraud.html?pagewanted=all).

¹² Government Accountability Board, *G.A.B. Issues Flier on Voter Rights and Responsibilities* (July 31, 2012) (online at <http://gab.wi.gov/node/2437>).

¹³ Affidavit of Ann Bennett in Support of Plaintiffs' Motion for Summary Judgment on Defendant's Counterclaim (Aug. 31, 2011), *Texas Democratic Party v. King Street Patriots, Inc.*,

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Page 5

the Texas Democratic Party assigned to oversee Harris County operations asserted in a sworn affidavit that he helped “compile a list of incidents at the polls which included KSP poll watchers hovering over voters while they were attempting to cast their ballots and disrupting polling sites by loudly arguing with election judges.”¹⁴

Your organization denied these claims, stating publicly:

The Harris County Attorney’s office and the Department of Justice made inquiry following these charges and found literally nothing in terms of voter intimidation by True the Vote trained poll watchers. ... Not one person participating as a poll watcher was identified as having committed an act of voting intimidation.¹⁵

In contrast, when Committee staff contacted Harris County Senior Assistant County Attorney, Doug Ray, he reported that “King Street Patriots and True the Vote volunteers were not fully exonerated for acts of intimidation while serving as poll watchers in 2010.” He explained:

We did find that in a few instances complaints we received turned out not to be a True the Vote volunteer poll watcher, but there were in fact several incidents in which voters complained that True the Vote volunteers were “hovering,” and standing too close to voters to allow them to cast a confidential ballot.¹⁶

District Court of Travis County, Texas (No. D-1-GN-11-002363) (online at www.campaignlegalcenter.org/attachments/Court_Cases_Of_Interest/TDPvKSP_TDP_SJ_Moti_on_8-31-11.pdf). See also True the Vote, *History of True the Vote* (online at www.truethevote.org/about/history/) (accessed on Oct. 16, 2012) (“True The Vote began out of experiences during the 2008 election cycle of the Harris County, Texas Tea Party organization, King Street Patriots. ... By Election Day, 2010 True The Vote had 1,000 poll workers trained and ready to observe the election process at Harris County polling stations. This learning experience set the stage for the larger effort soon to come.”).

¹⁴ Affidavit of Anthony Gutierrez in Support of Plaintiffs’ Motion for Summary Judgment on Defendant’s Counterclaim (Aug. 30, 2011), *Texas Democratic Party v. King Street Patriots, Inc.*, District Court of Travis County, Texas (No. D-1-GN-11-002363) (online at www.campaignlegalcenter.org/attachments/Court_Cases_Of_Interest/TDPvKSP_TDP_SJ_Moti_on_8-31-11.pdf).

¹⁵ Letter from Brock C. Akers, Attorney for King Street Patriots, True the Vote, and Catherine Engelbrecht, to Bob Edgar, President, Common Cause, and Miles Rapoport, President, Demos (Sept. 14, 2012) (online at www.scribd.com/doc/106188242/Common-Cause-9-14-12-Letter).

¹⁶ Telephone Call with Doug Ray, Senior Assistant County Attorney, Harris County Attorney’s Office, and Democratic Staff, House Committee on Oversight and Government Reform (Oct. 16, 2012).

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Page 6

Mr. Ray also stated that when he visited True the Vote's offices in Harris County, there were maps on the wall with push pins indicating the polling places True the Vote was targeting, and they were primarily in minority precincts, including the 18th Congressional district.¹⁷

The Harris County Attorney's office was so concerned about potential voter intimidation that it subsequently issued a letter to election judges clarifying that "poll watchers are not allowed to follow voters into the 'voting station' to observe the voters unless the voter requests assistance from an election judge or election clerk." They also recommended that "[d]isputes may be minimized by marking lines on the floor indicating areas where the 'voting station' is located."¹⁸

Allegations of Coordination with the Republican Party

There is mounting evidence that True the Vote's aggressive poll monitoring tactics are being coordinated closely with the Republican Party.

For example, last week it was reported that True the Vote donated \$5,000 on August 17, 2012, to the Republican State Leadership Committee.¹⁹ This political organization has raised millions of dollars for Republican candidates and describes itself as "the largest caucus of Republican state leaders and the only national organization whose mission is to elect down ballot, state-level Republican office-holders."²⁰ The group's September 20, 2012, filing with the IRS appears to substantiate this report.²¹ This contribution raises serious questions about your claims that True the Vote is a "nonpartisan" organization, as well as your application with the IRS for 501(c)(3) status.

In addition, in Arizona, you appeared at a three-day conference of the Phoenix Tea Party in April. During your presentation, which you delivered in your official capacity as the Founder and President of True the Vote, you first praised the Tea Party. As you stated: "God woke us up

¹⁷ *Id.*

¹⁸ Vince Ryan, Harris County Attorney, to Harris County Election Judges, *Opinion In re: Supervision of Poll Watchers* (on file with Committee staff).

¹⁹ *Nonpartisan? True the Vote Gave \$5,000 to Republican State Leadership Committee*, Facing South (Oct. 12, 2012) (online at www.southernstudies.org/2012/10/nonpartisan-true-the-vote-gave-5000-to-republican-state-leadership-committee.html).

²⁰ Republican State Leadership Committee, *About the RSCL* (accessed Oct. 17, 2012) (online at <http://rslc.com/about>).

²¹ Republican State Leadership Committee, *Form 8872 Political Organization Report on Contributions and Expenditures* (Sept. 20, 2012) (online at www.southernstudies.org/sites/default/files/RSCL%20Aug12.pdf).

Ms. Catherine Engelbrecht
Page 7

for a reason, and there is no explanation other than but by the hand of God that the Tea Party even happened.” Shifting to the Republican Party, you then stated:

The Republican Party has reached out to us and said, “Wow, you have volunteers, we would love to get them placed. What can we do to help? We’ll make sure people know about your training. You tell us when you have volunteers and we’ll make sure to get them placed.”²²

In New Mexico, True the Vote’s State Director, David Harris, appears to be running the Republican Party’s training for poll watchers in Bernalillo County. Just this month, he was recorded on audiotape denying access to a Democrat for a “private training class for people who are invited to take part in this class.” According to the report, Mr. Harris “demanded to know the party affiliation” of the individual seeking entry, and after “learning he wasn’t Republican promptly denied him entry.”²³

In Texas, Texans for Public Justice filed a complaint in 2010 with the Texas ethics commission that cited multiple instances in which King Street Patriots and its True the Vote initiative worked directly with Republican Party candidates and recruited “poll watchers” for them.²⁴ The complaint states that in May 2010, “True the Vote brought David Horowitz, a nationally known right-wing commentator, to Houston to address the importance of defeating Democrats.” In an exchange with you, Mr. Horowitz stated:

There is a chance this year to unseat some very bad people, but you have to win the election by 3 to 5 points. This is what was told to me by a Democratic consultant who built the most powerful Democratic machine in my state. He regrets it. He said you guys—the Republicans—don’t win by 3 to 5 percent, we will steal that margin. So that’s your immediate task.²⁵

²² Catherine Engelbrecht, *Address to the Phoenix Tea Party Patriots in Mesa, Arizona* (Apr. 14, 2012) (online at www.youtube.com/watch?v=SiUxV8TYkRk&feature=related).

²³ ProgressNow New Mexico, *Update: True The Vote Teams Up With GOP For Secret Training* (Oct. 5, 2012) (online at www.progressnownm.org/blog/2012/10/update-true-the-vote-teams-up-with-gop-for-secret-training.html).

²⁴ Texans for Public Justice, *TPJ Serves Houston Tea Party Groups With Election-Law Complaints* (Oct. 18, 2010) (online at http://info.tpj.org/press_releases/pdf/kingstreet.pr.pdf).

²⁵ *Id.* (citing The King Street Patriots Shadow Party and Beyond, *Remarks by David Horowitz* (May 24, 2010) (online at www.youtube.com/watch?v=vBEJfuOE1Lk&noredirect=1)). See also True the Vote 2011, *Remarks by David Horowitz* (online at <http://vimeo.com/30633379>).

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Page 8

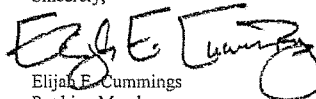
Request for Additional Documents

In order to examine your organization's poll monitoring activities, I request that you provide the following documents and information:

- (1) the numbers of poll monitors that True the Vote has trained and the political party these poll monitors requested to "represent at poll" when they registered with True the Vote, organized by state, county, and precinct;
- (2) a list of polling places that True the Vote intends to place volunteers to serve as poll monitors, organized by state, county, and precinct;
- (3) a list of polling places True the Vote volunteers have signed up to work as poll monitors, organized by state, county, and precinct;
- (4) copies of voter roll lists that True the Vote may utilize to review voter eligibility on Election Day;
- (5) copies of materials used to train volunteers for poll monitoring, including groups "empowered" by True the Vote that share access and use of True the Vote's website portal; and
- (6) all correspondence with national, state, and local political parties regarding poll monitoring by volunteers of True the Vote and its affiliates during early vote periods and on Election Day.

I request that you provide the documents requested above and in my original letter by October 31, 2012. After receiving these documents, we will schedule a meeting in Washington, at which time you should be prepared to discuss fully the allegations against your organization and the documents you have provided. Thank you for your attention to this matter.

Sincerely,


Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman

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October 29, 2012

Rep. Elijah Cummings
Member of Congress
2235 Rayburn HOB
Washington, DC 20515

Re: Your interview and comments concerning True the Vote

Dear Rep. Cummings:

I represent Catherine Engelbrecht and True the Vote. We are shocked at your comments on "The Ed Show" of MSNBC, which you either know not to be true or have done nothing to assure their accuracy. We had higher hopes for you as an otherwise respected Member of Congress.

You said on MSNBC that we had "gone silent" in terms of a response to your requests. As you well know, we responded to your request for information when you wrote us the first letter, which was filled with inaccuracies and innuendo. Catherine Engelbrecht offered to travel to meet you in Washington D.C. to explain the actual activities of True the Vote and dispel the misinformation you and your staff had recited in your letter. Instead of agreeing to a meeting, you demanded more and different information—information which would be near impossible to directly gather. True the Vote has been organizing and doing its work for all of 2012, and yet you demand information from us—without any right or authority to do so—in the time most calculated to keep us from our task of reducing voter fraud.

You have accused our organization of committing a crime, of acting in an illegal manner and acting so as to reduce the opportunity of minorities to vote. You have said that our poll watchers illegally cause problems at polling places, all with the desire to cause people to get out of line and not vote. You have said that we have targeted the elderly. Each and every one of these allegations is categorically false, has no basis in truth, and is not anything about which you are capable of substantiating with anything other than a conjured allegation of some individual seeking to distort reality. This defamation per se is shameful. Without so much as the common courtesy to meet with Ms. Engelbrecht, where you could have quickly learned how off track your allegations are and have been, you instead go on national television and call this group names and cast them in the most unflattering light possible.

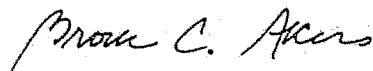
You incorrectly conclude that the activities of True the Vote constitute some secret plot by the Republican Party to cast out unfavorable voters. True the Vote is a non-partisan group, who has reached out any number of times to offer poll watcher training services to Democrats as well as Republicans. We are interested in a fair election, untainted by voter fraud, where voters are alive, registered, who they say they are and vote only once.

Your admonition to True the Vote that you and apparently a group of others will be watching their activities is interesting. We operate completely in the open, with anyone and everyone available to see what we do and when we do it. Though many may accuse us of misconduct, never has anyone been able to establish anything close to the convenient fabrications that have been alleged about our activities. We are a group of concerned citizens, both Democrats and Republicans, who are fed up with the business as usual activities where voter fraud becomes the rule rather than the exception, and no one seems to care. We care. You should care. Instead of doing all you can to thwart the efforts of those attempting to eliminate voter fraud, one might think you would join us in these efforts. But eliminating or reducing voter fraud is apparently not your interest.

A statesman looks for truth, seeks justice and acts in the common good without consideration of fealty to personal interest or party. A statesman would accept the invitation to meet with Catherine Engelbrecht and learn first hand what True the Vote actually does and how they do it. The offer still stands for her to meet with you.

If you choose to meet with her, you will most surely be compelled to retract the comments you have made, and we would hope that the MSNBC would give you the same opportunity for setting the record straight as they gave you for the time spent in casting misinformation. If you choose not to meet with her, a retraction of your comments is still necessary, and we will insist on nothing less.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brock C. Akers". The signature is fluid and cursive, with the first name "Brock" being more prominent.

Brock C. Akers

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House of Representatives

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December 20, 2012

Ms. Catherine Engelbrecht
Founder and President
True the Vote
P.O. Box 27378
Houston, TX 77227

Dear Ms. Engelbrecht:

As part of my ongoing investigation into efforts to challenge the ability of legitimate voters to register and vote, I am writing to accept your offer to meet with me in Washington D.C. regarding the activities of True the Vote. I propose that this meeting occur at 2:15 p.m. on January 16, 2012, but I am open to alternative dates.

In a letter on October 29, 2012, your attorney wrote: "We operate completely in the open, with anyone and everyone available to see what we do and when we do it."¹ Yet, to date your organization has not provided any documents in response to my letter requests on October 4 and October 18, 2012. For our meeting, I ask that you come prepared to discuss the specific topics I raised in my previous letters, including:

- (1) the manner in which True the Vote volunteers challenged the registration of voters, including the factors used to make registration challenges and how those factors were developed, as well as the locations that such challenges were made and how those locations were chosen;
- (2) the manner in which True the Vote volunteers challenged the ability of citizens to vote on Election Day, including the factors used to challenge voters and how those factors were developed, as well as the locations that such challenges were made and how those locations were chosen;
- (3) the information, data, and methodology that True the Vote volunteers used to challenge voter registrations and voter eligibility on Election Day; and

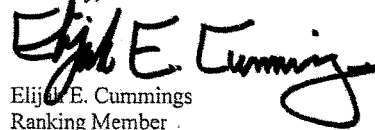
¹ Letter from Brock C. Akers to Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform (Oct. 29, 2012).

Ms. Catherine Engelbrecht
Page 2

- (4) the extent to which True the Vote coordinated with Republican party officials, Tea Party groups (including True the Vote's parent organization King Street Patriots) or other political organizations or 501(c)(4) entities, including funding received by these organizations.

Please confirm your willingness to meet by January 7, 2012. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Elijah E. Cummings". The signature is stylized, with the first name "Elijah" written in a cursive script and the last name "Cummings" in a more formal, slightly cursive font.

Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa, Chairman

TED POE
TEXAS
2nd District



Congress of the United States
House of Representatives
Washington, DC 20515-4302

May 14, 2013

Attorney General Eric Holder
United States Department of Justice
950 Pennsylvania Avenue N.W.
Washington D.C. 20530-001

Dear Attorney General Holder,

As you know, on May 10, 2013, the Internal Revenue Service publically admitted and apologized for specifically and intentionally targeting conservative groups for increased scrutiny in the application of the U.S. tax code during the 2012 election cycle. It has now become clear that high level IRS officials knew as far back as June of 2011 that IRS employees were systematically targeting groups with the words "tea party," "patriots," or "9/12 project" appearing anywhere in the group name or case file. Additionally, the agency also allegedly targeted groups where the group's stated goal was to reduce government spending, government debt, or taxes. Conservative organizations that have the goal of educating the public via advocacy or lobbying to "make America a better place to live" or who criticized how the country was being run were also targeted for added scrutiny.

As the top law enforcement officer in the land, you must share my great concern that a federal agency used its law enforcement and investigatory powers as a means to harass and target certain individuals whose political ideology differs from the Administration. Private citizens should not be punished for questioning government; this is America, not a third world dictatorship. This type of government oppression of political opposition must not be tolerated. Not only is this behavior a threat to the principles of freedom this nation was founded on, but I believe it is also criminal. It would appear that such actions are violations of federal law, and the Equal Protection and Due Process protections guaranteed to every American citizen in the Constitution.

In light of an IRS employee's admission of improper actions and other related allegations, and the chilling effect that they have on our democracy and rule of law, I ask that you quickly and fully respond to the following questions:

1. 26 USC sec. 7217 states that, "It shall be unlawful for any applicable person to request, directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer" and this section covers "the President, the Vice President, any employee of the executive office of the President, and any employee of the executive

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Poe submission

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JUDICIARY COMMITTEE

Congressional Victims' Rights Caucus - Chairman

Immigration Reform Caucus - Chairman

P.O.R.T.S. Caucus - Co-Chairman

office of the Vice President". Should evidence come to light that a covered individual directly or indirectly encouraged this behavior; will you direct your agency to prosecute such individuals for violating this section of the US Code?

2. 26 USC sec. 7217 also states that: "Any officer or employee of the Internal Revenue Service receiving any request prohibited by subsection (a) shall report the receipt of such request to the Treasury Inspector General for Tax Administration." Based on the facts that have been made public so far, numerous IRS employees clearly knew of this targeted enforcement and based on what we know now, did not report this conduct as required under this section. Do you believe the IRS employees who knew of this conduct (some knew as far back as June 2011) should be prosecuted under 26 USC sec. 7217? Will you call for the Department of Justice to open an investigation as to IRS employees who violated 26 USC sec. 7217? If not, why not?

3. 5 USC 7323, commonly known as the Hatch Act, states that a covered federal employee may not "use his official authority or influence for the purpose of interfering with or affecting the result of an election." Do you think that specifically targeting conservative groups for increased scrutiny by the IRS prior to the 2012 election violates this statute? If not, why not? Do you believe, as I do, that the intent of this targeting and harassment was to disrupt the work that these organizations were doing to promote their political beliefs prior to the election?

4. As you know, the US Office of Special Counsel has jurisdiction to investigate and prosecute alleged violations of the Hatch Act. Would you support a special investigation by the US Office of Special Counsel into possible violations of the Hatch Act by employees of the IRS or other Administration officials who encouraged such behavior?

5. The US Supreme Court Case *Heckler v. Chaney* 40 US. 821 (1985) addressed the question of to what extent is an administrative agency's decision to exercise its discretion to not take certain enforcement actions is subject to judicial review under the Administrative Procedures Act. While the Court held that an agency's determination not to enforce a law was generally unreviewable, the Court also stated that this unreviewability was rebuttable in the situation where an agency "consciously and expressly" adopts a policy that is so extreme that it represents an abdication of its statutory responsibilities. Do you believe that a situation where the IRS decided, in a systematic and widespread fashion, to selectively enforce our nation's tax laws against groups who had certain political beliefs would qualify as an example where an agency is "consciously and expressly" adopting a policy that is directly opposite of their constitutional duty to

equally enforce the laws and Constitution of the United States? If not, why not? Would your analysis change if facts were to come to light that this enhanced IRS targeting was also directed towards religious groups that may have had different political views than the administration?

6. As you know, the U.S. Supreme Court has held that selective prosecution exists where the enforcement or prosecution of a Criminal Law is "directed so exclusively against a particular class of persons ... with a mind so unequal and oppressive" that the administration of the criminal law amounts to a practical denial of Equal Protection of the law (*United States v. Armstrong*, 517 U.S. 456, 116 S. Ct. 1480, 134 L. Ed. 2d 687 [1996], quoting *YICK WO V. HOPKINS*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 [1886]). If, as the IRS has indicated they were guilty of doing in their recent apology, it is proved that the IRS specifically targeted conservative groups for additional scrutiny in the application of the laws of the United States, do you believe that the agency (and all those in the administration who were involved) would be guilty of violating the equal protection rights of the individual Americans who make up the membership of the targeted groups? If not, why not?
7. Given the seriousness of these crimes, the threat to our democratic process which arises from the alleged conduct, and the potential for high level members of the Administration being involved in the initial conduct and the ensuring cover-up; will you call for a special prosecutor to be appointed to investigate these allegations? If not, why not?

Thank you for your quick and complete responses to these important questions. I look forward to working with you to ensure that Law and Constitution of the United States is equally applied to all citizens of our great nation.

Sincerely,



TED POE
Member of Congress

Statement for the Record
Congressman Michael R. Turner
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs
“The IRS Targeting Investigation: What is the Administration Doing?”
February 6, 2014

I am deeply concerned about the Internal Revenue Service’s (IRS) targeting of individuals and groups for their political beliefs, as well as the Administration’s so-called investigation and response. Since the Treasury Inspector General for Tax Administration (TIGTA) first brought to light this systematic, politically-motivated discrimination, I have continued to highlight this serious infringement on the rights of hardworking taxpayers and the need to prevent further discrimination by enacting additional taxpayer protections.

The ongoing investigations into the IRS’ conduct by the Committee on Oversight and Government Reform and the Committee on Ways and Means seek to provide answers and hold accountable those Administration officials responsible for targeting Americans for their political beliefs. However, it cannot be said that the Administration’s own investigation, led by one of President Obama’s campaign supporters, is doing anything to restore the trust of either the American public or Congress. A politically-connected investigator leading the probe into politically-motivated targeting of individuals and group for audits and investigation on the basis of their beliefs – and not a legitimate tax-related purpose – defies our most basic commonsense.

No matter which party controls the White House, taxpayers deserve to be treated fairly. Fairness is neither partisan, nor political. And as we have seen, the IRS has failed to act in a fair, nonpartisan, and nondiscriminatory manner.

That is why I introduced H.R. 1950, the Taxpayer Nondiscrimination and Protection Act. This bill is aimed at preventing biased, politically-motivated discrimination and seeks to strengthen taxpayer protections by making it a crime for IRS employees to execute this sort of targeted discrimination. With the support of over one-hundred of our colleagues as cosponsors and companion legislation in the Senate introduced by Senator Marco Rubio, this bill would take the important step of increasing the maximum penalty for discrimination from mere termination to a criminal punishment.

The criminal punishment would allow the federal government to impose a fine, up to five years imprisonment, or both - which is identical to the maximum imprisonment for a member of the President’s cabinet who directs an employee to take that sort of action (26 U.S.C. §7217). Moreover, the bill expressly states that political speech and political expression are rights guaranteed by the U.S. Constitution. The Taxpayer Nondiscrimination and Protection Act seeks to restore those concepts of fairness to the federal government’s tax collectors, so that no individual or group is so wrongly discriminated against in the future.

As a senior Member of the Committee on Oversight and Government Reform, I remain committed to seeking answers from the Administration and I thank you for holding today’s subcommittee hearing.

Supplemental Items for the Record

Congressman Paul Gosar
Member of the Committee on Oversight and Government Reform,
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

Subcommittee Hearing: "The IRS Targeting Investigation: What is the Administration Doing?"

In August of 2013, my office held a hearing in Mesa, Arizona on abuses of power at the Internal Revenue Service (IRS) and the Environmental Protection Agency (EPA). Congressmen Trent Franks, Matt Salmon, and David Schweikert were also in attendance to hear from Arizonans affected by the federal government's abuses of power. Stakeholders ranging from state and local government leaders, businesses, and advocacy groups came to engage in an open dialogue about the dangers of these abuses of power.

I am submitting for the record some documents related to the IRS portion of the Mesa hearing. These documents include my statement for the record, the testimonies of Kelly Townsend and Chris Rossiter of the Greater Phoenix Tea Party Patriots (GPTPP), as well as a letter submitted to the Committee on Oversight and Government Reform from the GPTPP in March 2012 requesting an investigation into the IRS for potential misconduct.

OPENING STATEMENT OF CONGRESSMAN PAUL GOSAR

Congressional Field Hearing: E.P.A. and I.R.S. Abuse:
Bureaucrats Out of Control?

August 22, 2013—Mesa, Arizona

Good Afternoon.

First, thank you for coming here today. I want to thank my colleagues Congressmen Matt Salmon, Trent Franks and David Schweikert, for taking time out of this August work session to take part in today's hearing.

I want to thank our witnesses who have taken time out of their schedules from their jobs and businesses to provide to us important information about how our Federal Government is making decisions that impact everyone here in Arizona.

We have a lot of ground to cover today, so I apologize in advance that there will be time limits on testimony in order to make sure we give everyone a chance to testify.

For some time now my colleagues and I have been watching a storm cloud from Washington, D.C. hover over Arizona. Policies that make no sense to us here, indeed, policies that inflict harm on the people, keep getting implemented even when Congress has not authorized the policies.

We start with a basic premise—and we need to unfortunately—that Congress passes laws and sets the policies for the country—not the President. The President has one job duty under our Constitution—to faithfully execute the laws passed by Congress.

What we have seen, however, is an imperial presidency, an Administration that ignores laws it does not like or “creates” policies with the effect of law it does like. This Administration has chosen to ignore deadlines implementing the health care act, it has chosen to ignore immigration laws, and on and on. Article II, Section 3, of the Constitution states that the president “shall take Care that the Laws be faithfully executed.” This is a constitutional duty. It is not a recommendation. The President has no discretion about whether to enforce a law or to create a law.

I bring this out in the context of today's hearing because the Obama Administration, through the EPA, is ignoring aspects of the Clean Air Act that requires the federal government to work with state governments. The law is clear that that air pollution control and prevention is the primary responsibility of the States and local government. Further, the EPA is now implementing laws in secret that Congress has rejected, specifically, Cap and Trade.

These unconstitutional acts have historical precedence. Professor Michael McConnell noted that English monarchs "asserted a right to dispense with parliamentary statutes they disliked." Thus, "The very first provision of the English Bill of Rights of 1689—the most important precursor to the U.S. Constitution—declared that "the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal."

"To make sure that American presidents could not resurrect a similar prerogative, the Framers of the Constitution made the faithful enforcement of the law a constitutional duty."

Today we will hear testimony from witnesses about how the EPA is ignoring its obligation to the States on the Clean Air Act. We will hear testimony about the Navajo Generating Station and how the EPA is ignoring tribal trust obligations to the Navajo and the Hopi—federal trust duties to maximize the value of tribal lands, not harm them.

We will also hear about the EPA imposing, in secret, Cap and Trade, and doing so by threats and intimidation. We will also hear from others, such as Mr. Trussell, about how the EPA is attempting to classify coal ash from power plants as a Hazardous Waste. Congress has not authorized this. Nor would it since coal ash is hardly hazardous and in fact is a very useful product for the concrete industry.

We will hear how the EPA, under the Clean Water Act, is attempting to assert jurisdiction over dry areas even though Congress only gave the EPA jurisdiction over "navigable" waters.

We will also address the IRS. By now we have learned how the Obama Administration used the IRS to target what it considers political enemies, and what the rest of the nation calls patriotic Americans. Using the most feared government agency, the IRS, to harass and intimidate American citizens and taxpayers, is an abuse that cannot stand.

I proposed a new law, the IRS Anti-Abuse Act, H.R. 2025. My colleagues here all joined me on that bill. This legislation makes it illegal to discriminate against organizations and individuals based on political affiliation and ideology. Outgoing IRS Commissioner Steven Miller insisted that the unfair targeting of conservative groups was "absolutely not illegal." This legislation would make that action illegal. This language was recently passed overwhelmingly, as part of a package of proposals to reign in big government, in the U.S. House

Before we recessed, the last thing we all did was pass the Keep the IRS Off Your Health Care Act of 2013, which passed 232-185. The four of us here were the only Arizona representatives

to vote for this. This bill was passed because we do not trust the IRS to handle your medical records and medical privacy or to implement any part of Obamacare.

My hope is that we listen today and gather information. We will submit the testimony and comments to the appropriate agencies. We will take what we learn here today back to Washington, D.C. and take action, as best we can, to rectify the wrongs and stop the bureaucrats in D.C. from going outside the laws.

Thank you again and I look forward to hearing more from everybody.

Kelly Townsend

GPTPP

Statement

Thursday, July 4th, marks the 4th anniversary of the Greater Phoenix Tea Party Patriots group. As we began to organize, we realized quickly that what we wanted our groups to be comprised of three elements- Keeping apprised of current events, educating ourselves on Constitutional, historical and civic matters, providing action items for our group members to be involved in, and most importantly, a method for our members to sound off on the issues, providing them with a means to have their voices heard. We were adamant about remaining non-partisan, adhering to three core issues that include preserving the Constitution, limited government, and fiscal responsibility, and invited any person regardless of political persuasion, to join our groups if they wanted to be informed about these issues. While other groups organized as political action groups, we chose to follow the lead of the national Tea Party Patriots and not endorse candidates so that we could focus on issues rather than become a branch of any particular party.

Because we chose to include "Tea Party" in our name, the IRS has admitted, and apologized for, targeting groups like ours. We believed when we were formed, and maintain the same belief today, that we have come full circle, finding ourselves in the same position as the signers of the Declaration of Independence. Our very name stands for Taxed Enough Already. There was hope for our founders to resist an overbearing government. Is there hope for the Greater Phoenix Tea Party? After 30 months, we have yet to receive either a denial or acceptance letter, and have been (and continue to be) hindered in our operations because of it. The apology for the targeting is not enough, we need resolve now. How long will the country turn a blind eye to this problem and justify it? Who has the backbone to stand up and fight for the fair treatment of Conservative organizations?

Our group is made up of families, young and old, who still have faith in the greatness this country was founded on. We are among American friends and work hard to educate the community about the issues and their civic duty. We stand on the sovereignty of Arizona and her 10th Amendment rights to govern the land within. We applied for 501c4 status in order to give back to the future generations that have yet to be born. We want to preserve the accuracy of our American heritage and pass along a fiscally sound country. Our focus is the reasonable taxation of the citizen so that they can continue to pursue the American dream.

How long will we have to chase the IRS for our approval? This is the great United States of America, to whom we pledge allegiance. We expect equal treatment from our government. We are tired of a minimized operation, left in doubt of our future, for years upon end. We appreciate that you have come here to hear our stories, and expect fully that you will fulfill your obligation to hold accountable those who seek to neuter us by their silence and nonfeasance. I wish you Godspeed.

March 19, 2012

To the Honorable Darrell Issa
Chairman--United States House Committee on Oversight and Government Reform
2347 Rayburn House Office Building
Washington, D.C. 20510

Dear Mr. Issa:

The Board of the Greater Phoenix Tea Party Patriots (GPTPP) respectfully requests that the United States House Committee on Oversight and Government Reform open an investigation into recent actions conducted by the United States Internal Revenue Service (IRS). The actions to which we are referring involve the distribution of letters by the IRS to numerous 501c4 applicants in which intrusive requests for voluminous amounts of inapposite information have been demanded.

In 2010 the GPTPP filed with the IRS as a tax exempt corporation under 501c4. We have yet to receive our approval. At first we thought the delay in receiving our tax exempt designation was unique to our circumstance, though we didn't know exactly why. We diligently tracked down the agent in charge of our file and regularly checked on our status for over a year. Seeing now that so many like-minded groups were being treated in the same manner, we are reasonably left to conclude that a coordinated policy to stall approvals could very well have been in place.

In February, we were the recipient of one of the now infamous IRS letters. The agent requested a wide scope of information from our organization and gave us three weeks to compile and submit it. The type of information that was requested seemed intrusive, overreaching, and at times quite irrelevant. We have enclosed a redacted copy of that letter for your benefit. It has some of the requests of concern highlighted.

Recently, our organization has retained attorney Jay Sekulow and the American Center for Law and Justice (ACLU) to represent us in this matter. We also hope to obtain help from you and other concerned members of Congress. We are encouraging a full investigation into the IRS and any part of the current Obama Administration that may have directed these actions. If this is how the IRS scrutinizes all 501c4 organizations then this onerous policy should be revisited and overhauled. If this is a selective inquiry based upon political retribution against those whom a particular Administration disagrees with, then it must be determined if any laws have been broken by the IRS and others.

We would be honored to provide you with any information that would assist you in this matter and of course we are fully willing to testify should the need arise. The several tea party members around this country love our Constitution, the rule of law, and the American way of life. Rest assured we will all be fully engaged as this issue unfolds.

Sincerely,

Chris Rossiter
President; Greater Phoenix Tea Party Patriots

Members of Congress, Attorney General Horne, Representatives, and guests:

Thank you for hosting this hearing; I'm Chris Rossiter, President of the Greater Phoenix Tea Party

Seated with me today is Arizona State Representative and Greater Phoenix Tea Party co-founder, Kelly Townsend.

Our organization was founded as an Arizona non-member/non-profit corporation by Kelly Townsend and Les White in late 2009. At the end of our first full year we filed our 501c4 application with the IRS. In January of 2011, the US Treasury cashed our application check. Months went by with no word from the IRS so we tracked down and queried the agent in charge of our file. No compelling reasons were offered for the delay and it seemed we were always assured in subsequent calls to them that it shouldn't be much longer.

In February of 2012, we got one of the infamous IRS letters requesting inapposite information. When several other Tea Party groups across the country got their letters simultaneously, we knew something was up. We gratefully accepted legal counsel from the American Center for Law and Justice and they represent our organization in matters with the IRS. They submitted our responses to the IRS, answering only those questions they deemed constitutional and challenging the ones they felt were not. We still have not received approval or denial of our 501c4 application.

In May of this year, the IRS declared that they had indeed been targeting Tea Party and conservative groups leading up to the 2012 election cycle. Initial claims that low-level field agents took the initiative to target our groups have been shown to be lies. Ms. Lerner declared when this scandal came to light, that upon discovering the targeting of conservative groups, she ordered a halt to the practice immediately; yet here we are along with several other groups having not been approved or denied. Earlier this August, Representative Camp revealed that an IRS agent told him 3 months after this scandal broke that the IRS continues to target Tea Party groups. In essence, when the IRS initially came forward, their statement should have been, "we were wrong, we're sorry, but we're gonna keep doing it."

This harassing of ideological adversaries has vindicated the very founding of the Tea Party movement and has given all of our warnings to the American people credence regarding the dangers of big government. Because of their un-constitutional treatment we have filed suit against the IRS.

Today we are here to urge Congress to act relentlessly to expose this very real scandal and administer justice. We do have concerns about follow through based on what we've seen so far:

- Instead of being fired, Ms. Lerner has been rewarded and promoted to lead the IRS division charged with implementing Obamacare.
- A letter sent by 12 US Senators in early 2012 demanding answers from the IRS was ignored by the agency and no concern was expressed by those Senators at the dismissal of their inquiry, nor did any follow up take place of which we are aware.
- And of course the applications of several groups are still pending indicating that the targeting continues despite all of the national scrutiny this issue has received.

Sending a letter or holding hearings to appease constituents will not suffice; justice must be served.

The IRS flagged the applications of groups who listed as part of their organizing purpose "teaching the US Constitution" and those with the word "patriot" in their name. This discriminatory policy is not limited to the IRS; it is indicative of a broader set of Administration directives. A 2009 Homeland Security memo contained watch words for potential domestic terrorists. This included, "Those concerned over the economy; loss of jobs; foreclosures; antagonism toward the Obama Administration; oppose illegal immigration; oppose loss of US prestige, or those who fear communism." Take note—that only a Communist would be threatened by someone who fears Communism. This document reads like a political opposition harassment list—not a memo from a credible law enforcement agency. It makes suspects out of all patriotic Americans.

The Constitution is the supreme law of the land; it restrains government not citizens. Our country isn't in trouble today because it's outdated; we're in trouble because it's not being followed. What does it say about an administration that directs its agencies to harass those who teach and abide by the Constitution? If they don't respect the law, don't enforce the law, and don't abide by the law, are they not themselves criminals? Who is going to stand up and restrain them or will it be left ultimately to the American people when their long-suffering can endure no more? In the meantime, Americans are asking; when did we grant an agency comprised of public servants the power to terrorize our citizens and abridge our rights? Wasn't the Constitution designed specifically to prevent such things?

If only to satisfy curiosity, there is a famous question from Watergate we'd like answered; "What did the President know and when did he know it?" What was discussed at the Whitehouse during Mr. Schuler's 120 odd visits there coinciding with the targeting period? IRS Chief Counsel, Mr. Wilkins met with President Obama in the Roosevelt Room on April 23, 2012. Two days later, Mr. Wilkins' office sent the exempt organizations determination unit additional draft guidance for approving or denying Tea Party tax exempt status.

It is apparent that activists within our bureaucratic system have become masters at insulating themselves from traditional oversight. We implore you to be relentless in your investigation and administration of justice; be mindful of your oaths; turn Washington back to the people. Do this, and all Americans will benefit from your actions, and we will stand beside you and help develop the tools necessary to fight domestic enemies and tyranny. As long as the Federal government continues to expand beyond its delegated bounds and threatens individual liberty, America's standing will continue to shrink and we will accelerate towards an unnecessary national sunset.

In his inaugural address, Thomas Jefferson said regarding divergence from our founding principles, "...should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety."

May God deliver us from evil within and without and may He continue to bless our great land!

Thank you!

Chris Rossiter; President of the Greater Phoenix Tea Party

On behalf of the Board of the Greater Phoenix Tea Party